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„On the compatibility of fundamental rights and crisis communications: Experiences with disasters in Austria and Hungary.“

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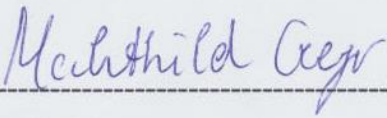
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Statutory Declaration

Herewith, I declare, that I have compiled this Master's thesis independently, and exclusively by myself. Furthermore, I confirm having used solely the sources published with the list of references.

Finally, I declare, that I have marked all sections which I have quoted out of the references either literally or according to its content, to the best of my knowledge and belief.

Vienna, 29th September 2017



Mechthild Geyer

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Foreword

In autumn of 2015, when my study course on Risk Prevention and Disaster Management started, I came to enjoy one evening lecture of Mr. Papp, envoy of the National Directorate of Security in Hungary.

He gave a speech on the red sludge disaster which had destroyed three communities in Western Hungary on 4th October 2010. Mr. Papp appeared to be a happy and honest man. He spoke about the guarding service for the plant which had given warning on the condition of the then broken dyke a few weeks ago. And, he spoke about the citizens who did not know at all what was going on, until the huge wave of caustic sludge was rushing towards them. Ten people came to dead. More than 150 were heavily injured. Most of the victims are still not reimbursed. And, they suffer from the feeling that no one cares about their situation.

In the aftermath of Mr. Papp's speech, I wondered if it had been enough to take a megaphone and a car, and to drive to the afflicted villages to inform the citizens. Additionally, I wondered if I had been brave enough to do so.

Everything I got to hear during the study course of risk prevention and disaster management on issues like Risk Governance, civil society's participation in risk management, and crisis communications led me back to the event of October 2010 in Western Hungary, and the people who are still suffering. Could this disaster have been prevented to become a nightmare for a few hundred people? Thanks to my lecturers, I'm convinced today that this scary outcome could have been mitigated back then.

Therefore, I decided to contribute to the development of crisis communications according to fundamental rights standards with my Master's thesis. As for so many people, the red sludge disaster of Western Hungary is still not over. In February 2017, the responsible tribunal has annihilated the court decision of 2016 which had acquitted the representatives of the responsible entrepreneurship.¹ A new trial was decreed in February which is still ongoing.

¹ Cf. Mayer 2017, page 6.

1 Introduction

This treatise is concerned with the question, if the basic principles of the recent crisis communications standards - which are going to be defined more concretely by the below described case studies - can be completely consistent with the fundamental right standards set by the members of the European Council and the European Union, and with standards of international law, in general.

I will depict two disasters of which one happened in the year 2000 in Austria, the second happened in the year 2010 in Hungary, with a strong focus on their crisis communications processes to deduce, finally, possible answers to the question of their compatibility with fundamental rights standards. The Austrian disaster is a paramount example of crisis communication processes, while during the Hungarian disaster in 2010 the information flows were quite low.

To structure these disasters, I will apply the four stages of a crisis according to Steven Fink,² and, consequently, I will process the in this way sorted disasters of Austria and Hungary adequately to identify the crucial stages for the application of fundamental rights. These crucial stages I will challenge with the right to freedom of information³, the right to life⁴, the right to the protection of personal data⁵, and the right to property⁶. I will measure the experiences of General Franz Lang, the then head of the police forces to manage the cable car disaster near Kaprun, with the European Union's investigation's results regarding the red sludge disaster in the town of Ajka nearby Kolontár⁷ in 2010. It is noteworthy, that the comparison is partly unsuitable, because the report of Franz Lang on the disaster near Kaprun⁸ is led

² Cf. Walaski 2011, page 10.

³ Cf. United Nations 1966/1976, International Covenant on Civil and Political Rights, Article 19, paragraphs 2 and 3.

⁴ Cf. Council of Europe 1950/2002, European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 2, page 6.

⁵ Cf. European Parliament & European Council 1995, Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, page 38, Article 1.

⁶ Cf. Council of Europe 1952/2002, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 1, page 31.

⁷ In the course of the following text, I will put the expression Kolontár for meaning the red sludge disaster near Kolontár caused by the Mal Ltd. in Ajka town in 2010.

⁸ In the course of the following text, I will put the expression Kaprun for meaning the cable car disaster near Kaprun on the way to the Kitzsteinhorn in 2000.

almost exclusively by facts, while the investigations of members of the European Union are partly led by political incentives, the Greens and Greenpeace are involved in it. But, as there has been less facts oriented publications on the Kolontár disaster altogether, I must rely on the European Union's material. With a content analysis on the material of both disasters, I will test the sensitivity of the different stages to the fundamental rights of my concern.

To gather proper material on the course of events of Kaprun, I have conducted a guided interview with General Franz Lang, today's director of the Austrian Federal Criminal Police Office, which is attached in complete transcription in the appendix of this Master's thesis. In his official capacity as head of investigation for the police forces, Franz Lang then joined the high command of the disaster relief forces. The leading questions of this guided interview focussed on Franz Lang's aims during his management of the crisis which emerged out of the cable car fire, on his commands and on the conditions out of which they resulted.

The case of Kaprun serves as a paramount example serves of crisis communications: In the face of 155 casualties, Franz Lang's deeply honest and direct way of communication became quite popular and widely appreciated. Here, the area of tension between fundamental rights and crisis management processes, could not abolish the possibility of democratic communication during a crisis.

In the contrary, the disaster of Kolontár in 2010 is still a not concluded case: The affected people were less informed about the impacts of the red sludge, which overran the three Western Hungarian communities Kolontár, Devecser, and Somlóvásárhely on 4th October 2010.⁹ Ten people died, 123 were injured, and altogether 790 persons were affected indirectly by the disaster according to governmental sources.¹⁰ The surviving inhabitants of that region are still not compensated for the physical and psychological violations they experienced. Until today, the traumatic memories strain all inhabitants of the three communities. Even people who were not afflicted directly themselves still suffer from the consequences of this momentous experience. Jozsef Varga, head of the „Association for the health of Kolontár and its environment“, made assertions on the psychic health of the

⁹ Cf. Schweitzer 2010, page 348.

¹⁰ Cf. Kátai-Urbán/ Césplö 2010, slide 6.

inhabitants of Kolontár, Devecser, and Somlóvásárhely towards one correspondent of the newspaper *Der Standard* in February 2017 on occasion of the nihilation of the court decision, which had acquitted all representatives of the Mal Ltd., the owner of the red sludge reservoir. ¹¹

Literature on the red sludge disaster is less, but there is one very profound work I want to highlight with this text: Ferenc Schweitzer conducted one study on the channel regulation of the Torna stream - one of the rivers which were heavily affected by the red sludge disaster. ¹² This study of Schweitzer, with a strong focus on technical provisions to avoid the reemergence of a disaster similar to the red sludge disaster of 2010, was published in the Hungarian Geographical Bulletin. ¹³ Schweitzer has written a matter-of-fact-report on the aftermath of the 2010 red sludge disaster which has raised the question on the safety of the entire alumina factory. His honest report proved, that the lack of adequate disposal of the waste water of the Mal Ltd. could have been observed already seven years before the disaster happened. ¹⁴

With the above described comparison, I expect, that the crisis communications standards will show deviation from the legal standards of fundamental rights in an empirically evident way. By exploring both the legal aspects of the application of the international law and the Treaties of the European Union in crisis settings and the practical, fulfilling the people's needs aspects, I will, therefore, try to add some knowledge to the present crisis communications procedures.

To approach the second site of the coin, the people's informational needs in crisis settings, I will employ the theories of Peter M. Sandman which are concerned with the coping with public outrage. ¹⁵ Additionally, I will adduce the book of Sabine Volgger et alii who conducted recommendations for successful crisis communications after her experiences with the flood disaster in Tirol in 2005. ¹⁶

¹¹ Cf. Mayer 2017, page 6.

¹² Cf. Kátai-Urbán/ Césplö 2010, slide 12.

¹³ Cf. Schweitzer, Ferenc (2010): Channel regulation of the Torna stream to improve environmental conditions in the vicinity of red sludge reservoirs at Ajka, Hungary.

¹⁴ Cf. Schweitzer 2010, page 358.

¹⁵ Cf. Sandman 2004, pages 1-7.

¹⁶ Cf. Volgger 2006.

To sort the both cases, I will use the four stages of a crisis which Steven Fink has published in 1986.¹⁷ He dissected many crises to deduce their underlying which is published in his book on *Crisis Management. Planning for the Inevitable*.

Furthermore, I will take into account the work of Pamela Walaski, who summarized the historical development of crisis communications in a paramount manner.¹⁸ An additional expert is Kathleen Fearn-Banks, an US-American, who co-operates with Peter M. Sandman, especially in consulting-tasks for companies.¹⁹ The emphasis on communications science is given by employing *The Handbook of Crisis Communication* of Timothy Coombs and Sherry Holladay who are themselves professors for communication studies.²⁰

The crucial fact, that the fundamental freedom of information in a democratic state deviates from the principles of crisis communications in an empirically evident way, serves as basic assumption of this paper. Out of this basic fact emerges an area of tension which has been described by Klaas Hendrik Eller with his treatise on *Fundamental rights in disaster prevention* (German original: *Grundrechte im Katastrophenschutz*)²¹ in the anthology *Annotations on disaster law* (German original: *Anmerkungen zum Katastrophenrecht*). The German legal expert Andreas von Arnould frames the field with his treatise *International law's obligations to inform about natural disaster* (German original: *Völkerrechtliche Informationspflichten bei Naturkatastrophen*).²² Furthermore, I will employ Christoph Grabenwarter's work on the *European Human Rights Convention* (German original: *Europäische Menschenrechtskonvention*)²³ and Markus Beham's, Melanie Fink's and Ralph Janik's publication *Understanding International Law* (German original: *Völkerrecht verstehen*).²⁴

¹⁷ These stages are: prodromal, breakout, chronic, resolution. Cf. Walaski 2011, page 10.

¹⁸ Cf. Walaski, Pamela (2011): Risk and crisis communications. Methods and Messages.

¹⁹ Cf. Fearn-Banks, Kathleen (1996): Crisis Communications. A Casebook Approach.

²⁰ Cf. Coombs / Holladay 2010, pages xii & vx.

²¹ Cf. Eller, Klaas Hendrik (2008 & 2009): Grundrechte im Katastrophenschutz.

²² Cf. Arnould 2005.

²³ Cf. Grabenwarter 2009.

²⁴ Cf. Beham / Fink / Janik 2015.

Finally, it is worth noting, that between the cable car disaster in Kaprun/Austria in 2000 and the red sludge disaster in Ajka/Western Hungary in 2010 are to be found two main differences:

- (a) The stages of the crises differ widely: While in Kaprun there existed almost none prodromal phase, there existed a huge prodromal phase for the Hungarian red sludge disaster. – However, the question if the Hungarian officers took advantage from this prodromal phase is not answered yet.
- (b) These circumstances lead to the second difference: During the cable car disaster's crisis, the officers tried their best to fulfill the crisis communication tasks. The consideration of the red sludge disaster, to the contrary, requires the inquest of the lack of crisis communications politics.

These observations are led by the main research question: How can democratic standards be satisfied within the scope of crisis communications?

The connected hypothesis [main hypothesis = MH] reads, that it is, indeed, possible to envelop standards of fundamental rights and international law into crisis communications processes. The most crucial point is the public relations service – not only via the media, but, first and foremost, towards the so-called *qualified public*, that means the people who are somehow directly afflicted by the crisis, e.g. relatives of victims or persons who own property within the afflicted area. [MH]

The subordinated question, consequently, reads why these rights have been chosen, and with which legal standards of the international law can they be protected, if they can.

The enlisted rights seem to be especially worth to be protected, this can be shown by the principal of proportionality that requires the proportionality of actions that the government has set with the resulting outcome. If a person has died or a person has been deprived of all her possession, the adequate action must have been such huge, that it seems impossible to meet. I assume appertaining prescriptions on the level of the European Union and on the level of the United Nations.

The above assumptions can be summarized as the first subordinated hypothesis: The principal of proportionality requires an indescribably huge effort to protect the right to life, the right to private and family life, the right to freedom of information, and the right to property. Therefore, these rights have been chosen, and the legal standards that protect these rights are of interest. There is, on the

European level, the EU General Data Protection Regulation, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and, on the level of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Human Rights, and the International Covenant on Economic, Social and Cultural Rights. [H1]

The second subordinated hypothesis will help to structure the investigation of the first subordinated hypothesis: On the basis of the four stages of a crisis by Steven Fink, I assume, that the last but one and the last stage, called chronic and resolution, are crucial for challenging crisis communications with democratic standards. [H2] I will test this hypothesis by adapting the structures of the deployments in Kolontár and Kaprun to the stages in order to investigate which kind of communications are necessary in which stages. The experiences of General Franz Lang, then head of the police forces and part of the high command to manage the cable car disaster near Kaprun, will be very useful in this regard.

These are the four stages of a crisis established by Steven Fink:

- (a) Prodromal: planning for the potential crisis by identifying hints for the crisis.
- (b) Crisis breakout: the earliest events as part of the crisis.
- (c) Chronic: coping with the effects of the crisis.
- (d) Resolution: The most dangerous effects of the crisis are resolved.

The third research question which asks what information is needed by citizens to cope with the crisis, is lacking the hypothesis. I expect to get the answer to this question by using the above introduced concepts of Sabine Volgger, Peter M. Sandman, Pamela Walaski, and Timothy Coombs. [H3] The question *which information* citizens need is accompanied by a forth question on *where citizens acquire useful information*. The related **forth hypothesis reads, that people take governmental sources much more serious than the assertions of common media**. [H4]

2 Approaching the objects of research

With chapter 2, I deliver short descriptions of the disasters with which I'm concerned in this paper: The first one which was initial for establishing this thesis has become known as the red sludge disaster of Western Hungary, I will refer to with the expression "Kolontár", the second one which serves as paramount example of crisis communications is popular as the hugest disaster of the Zweite Republik Austria ²⁵, and is known as the cable car disaster of Kaprun. I will refer to the latter with the expression "Kaprun".

Additionally, this chapter contains treatises on the most important aspects of crisis communications, regarding both the legal standards and the processual standards. It gives an overview over the different definitions of a crisis, crisis communications, and the fundamental rights that are affected in crisis management processes.

2.1 Kolontár – sketching the scene of the Western Hungarian red sludge disaster in 2010

The disaster of Kolontár has become known all around the world as it showed up deficiencies of the planning of the settlements and the recent safety precautions. On 4th October 2010, at 12.10 o'clock, ²⁶ the dam of a red sludge reservoir at the alumina factory in Ajka town broke, and caustic red sludge (a by-product of the alumina production in the Bayer-process) flooded the low-lying parts of the settlements Kolontár, Devecser, and Somlóvásárhely. ²⁷ Between 600.000 and 700.000 cubic meters of the red sludge rushed through the leak of the dam, ²⁸ whereby 10 people came to death, and about 400 families lost their home and their entire property. ²⁹

Very important in reference to the current dominating approach of equivocating on the nature's caprices, is the fact, that the settlements and the red sludge reservoir were built in a valley, which was originally a place of retention for the Torna stream.

²⁵ Zweite Republik, which means literally translated "Second Republic", is the official name of the period after the defeat of the Naziregime in 1945 in Austrian historiography. For further information see: <http://www.geschichte-oesterreich.com/1945-heute/> (4th May 2017).

²⁶ For the exact time announcement see the press release of the responsible Mal Ltd., online access point.

²⁷ Cf. Schweitzer 2010, pages 347, 348.

²⁸ Cf. Katái-Urbán / Césplö 2010, slide 3.

²⁹ Cf. Mayer 2017, page 6.

³⁰ As Ferenc Schweitzer pointed out, “the town [of Ajka; annotation] has expanded from the higher geomorphological levels toward the alluvial plane. [...] The natural valley of the stream was found initially in the place where cassettes VIII – X [of the red sludge reservoir, annotation] are placed at present.” ³¹ This is an undeniable hint, that at the place where cassettes VIII – X of the reservoir are settled, should be space for the retention of the Torna stream. Cassette X was the one that ruptured on 4th October 2010.

Nevertheless, there are plenty examples showing, that it is still possible to maintain settlements within those hazardous regions. One of the most impressive cases is, of course, the example of Galtür, wherein Austrian citizens continued living and even expanded their activities in tourism, successfully, after a huge avalanche had hit the village in 1999. According to Fuchs et alii, the values at risk in this Austrian village have increased dramatically since the 1950s. ³² These conditions were encountered by political efforts to establish risk maps, and to adapt the spatial planning to its results. ³³

The responsible actors of the Mal Ltd. have taken no adequate actions to cope with nature’s caprices at the red sludge retention pools, I argue with this paper. As the Mal Ltd., a daughter-company of Bayer, highlighted in its first press release after the disaster, the soil was smoothed after a long-term rain-period – and the dam broke mainly for that reason. ³⁴ If this is true, one must ask, consequently, if an attrition of the substance due to very rainy periods and a conditionally wet soil was truly unforeseeable. Indeed, it can be proved, that cassette X had been monitored at the day, the dam broke, but only the cassette itself, while the stability of the dam was not inspected. ³⁵ Allegedly, in the years ago, there had been a few news on leakages of the dam, “but no action was taken.” ³⁶

Furthermore, the directors of the *Mal Ltd. stated in the first press release after the disaster, that the reservoir had been controlled the same day before the disaster*

³⁰ Cf. Schweitzer 2010, page 354.

³¹ Schweitzer 2010, page 354.

³² Cf. Fuchs et alii 2005, page 899.

³³ Cf. Fuchs et alii 2005, page 900.

³⁴ Cf. Directorate of the Mal Ltd. 2010, online source.

³⁵ Cf. Harms / Cohn-Bendit 2010, page 1.

³⁶ Harms / Cohn-Bendit 2010, page 1

happened, and no deficiencies had been obvious, secondly, “dass der Rotschlamm laut den Abfallnormen der EU kein gefährlicher Abfall ist.”³⁷ – This is how laypersons were informed via the common media after the disaster. Indeed, they were heavily affected not by the red sludge, but by the caustic alkaline water, which accompanied the red-sludge-flood.³⁸ This fits with the result of the investigations of the correspondent of the daily newspaper *Der Standard* Gregor Mayer. On 1st March 2017, one article by Mayer was published in *Der Standard* in which he showed up the aftermath of the red sludge disaster that is still perceptible in the region. Many inhabitants of Kolontár, Devecser and Somlóvásárhely suffered heavy cauterizations that must have been treated for years.³⁹ The consequences are as well described in Mayer’s text: “drei Wochen Krankenhaus, weitere acht Wochen, in denen sie jeden zweiten Tag zum Verbändewechseln in Spital mussten, dann eineinhalb Jahre des selbstständigen Bestrahlens mit einer speziellen Lampe.”⁴⁰ Consequently, in November 2010, representatives of the Hungarian Directorate General for Disaster Management (DGDM) explained at a conference of the *Parties to the Convention on the Transboundary Effects of Industrial Accidents* in The Hague, that the reservoir contained a “[m]ixture of red mud (EWC 01 03 09, pH 13) and alkaline water (contained NaOH)”.⁴¹ The responsible stakeholders were **therefore right by claiming, that the red sludge itself was not dangerous,**⁴² **but the alkaline water, actually, was dangerous as it was caustic due to its content of Natrium hydroxide (NaOH).**⁴³ The political actors had indeed acknowledged an urgent need to react, obviously: In 2012, there have been organizational changes concerning the so-called dangerous industry in Hungary, which put low threshold Seveso companies under the supervision of disaster management authorities.⁴⁴

³⁷ Directorate of the Mal Ltd. 2010, online source.

³⁸ Schweitzer 2010, pages 347-348: „[...] the dam ruptured and ca 700 thousand **cubic meters of watered (alkaline) red sludge** flooded the low-lying parts of the settlements of Kolontár, Devecser and Somlóvásárhely [...]”

³⁹ Cf. Mayer 2017, page 6.

⁴⁰ Mayer 2017, page 6.

⁴¹ Kátai-Urbán / Césplö 2010, slide 3.

⁴² Cf. Kátai-Urbán / Césplö 2010, slide 4.

⁴³ Cf. Kátai-Urbán / Césplö 2010, slide 4.

⁴⁴ Cf. Takacs / Matczak 2013, page 14.

For the estimation of the damages caused by the red sludge disaster of 2010 the toll of human lives is prior, evidently, but, secondly, one needs to catch one glance on the environmental losses caused by this disaster: “Contamination soon reached water courses Marcal, Rabá, and later the Danube River.”⁴⁵

This condition was important for the precise investigation of the disaster’s course of events by representatives of the European Union. One of the investigators was Ulrike Lunacek, then and recent vice-president of the European Parliament who stated on occasion of the fifth anniversary of this disaster, that the Polluter Pay Principle of the European Union has to be applied in the case of Kolontár.

2.2 Kaprun – sketching the scene of the cable car disaster on the way to the Kitzsteinhorn in 2000

The cable car disaster of Kaprun on 11th November 2000 which brought 155 people from life to death, was the hugest disaster in the history of the so-called Zweite Republik Austria.⁴⁶ On this Saturday, a fire erupted in the tunnel at 9.05 a.m.⁴⁷ The smoke column rushed to the top of the cable car tunnel with a speed of 150 km/h, within 30 seconds the entire tunnel was smoked completely.⁴⁸ Due to the outbreak of the fire, the upcoming train came to a halt inside the tunnel at an inclination of 41 percent.⁴⁹ At first, it was unknown, how many passengers sat inside the train. Almost all passengers of this upcoming train choked in the huge smoke cloud, except of twelve people who could escape and ran downwards.⁵⁰ In the forthcoming train, there had to be distorted two victims, and in the summit station three victims.⁵¹ The altogether 155 victims of that disaster were mostly badly burned.⁵²

That disaster asked criminalists and scientists many conundrums, as, first and foremost, the cable car train had been supposed to be fire resistant, but this was

⁴⁵ Schweitzer 2010, page 348.

⁴⁶ Cf. Meyer 2003, page 1.

⁴⁷ Cf. Lang 2017, part 2 / 0:20 minutes.

⁴⁸ Cf. Lang 2017, part 1 / 8:22 minutes.

⁴⁹ Cf. Meyer 2003, page 1.

⁵⁰ Cf. Lang 2017, part 1 / 8:08 minutes.

⁵¹ Cf. Lang 2017, part 1 / 8:22 minutes.

⁵² Cf. Meyer 2003, page 1.

obviously not the case.⁵³ C. J. Beale has identified that and six further key factors related to that accident for an international periodical for chemical industry.⁵⁴ One of the crucial facts was, that the doors at the end of the tunnel, that could have mitigated the penetration of oxygen to the fire, were open during the initial phase of the fire, and, thus, perverted the tunnel to a chimney – massively increasing the consequences of the fire.⁵⁵ Therefore, obviously, the staff was not trained adequately for the case of emergency.

During the outbreak about 5.500 people were staying in the valley around Kaprun.⁵⁶ Altogether, 1.000 relief forces have finally been at the deployment site.⁵⁷ The first relief forces on the spot did not yet know, how many victims they had to distort, as the turnstiles at the entrance of the cable car tunnel did not count children, who often were passing underneath, and ski instructors, who were using a separate entrance without counter.⁵⁸ Therefore, at first no-one knew, how many people had entered the train.

Seven nationalities were represented among the victims⁵⁹ – correspondingly the interest of the international media was quite high. But, General Franz Lang as member of the high command had to balance the information, that had to be delivered to these media very circumspectly: “Naturally, we first waited until the fire had out-burned. As no one would be able to extinguish a fire inside the tunnel mechanically: If you tried, the relief forces had to go down thousands of steps with their heavy fire extinguisher on the back. – But, the information about such circumstances and decisions you can, of course, not deliver to the public”,⁶⁰ the General explained during the interview for this thesis.

⁵³ Cf. Beale 2002, page 28.

⁵⁴ Cf. Beale 2002, page 28.

⁵⁵ Cf. Beale 2002, page 31.

⁵⁶ Cf. Lang 2017, part 1 / 6:38 minutes.

⁵⁷ Cf. Lang 2017, part 1 / 11:02 minutes.

⁵⁸ Cf. Meyer 2003, page 2, and cf. Lang 2017, page 29 of this paper.

⁵⁹ Cf. Lang 2017, part 1 / 13:28 minutes.

⁶⁰ Lang 2017, part 1 / 18:25 minutes.

On day one of the disaster, Saturday, the 11th November, the relief forces were concerned with extinguishing the fire, not before the second day they began with the re-installation, that means with making the deployment site completely accessible.⁶¹ Shortly after the first day of the deployment, the commanders arrived at the decision, that they will communicate as much as reasonably practicably to the public via the media.⁶²

Additionally, the commanders had to care for the so-called qualified public: “[B]efore every communication to the ordinary public, there must be space for the communication to the so-called qualified public, that means the afflicted persons, and the disaster relief forces shall be informed well”,⁶³ Franz Lang and the other members of the high command acted accordingly, “[a]s the basic principle ran: No news from the media to be faced by relatives, but all the news from us.”⁶⁴

On day six after the disaster the relief forces left the deployment site. This was the result of a few conflicts between journalists and the inhabitants of Kaprun:⁶⁵ The expectation of the commanders read, that the journalists will leave the deployment site, as soon as the relief forces left the deployment site.⁶⁶ This became necessary, as the journalists – especially from the fourth day onwards – began searching for individual stories in the environment of the deployment site: “They caught worshippers after the church, they caught elementary school children after school. Of course, the citizens of Kaprun became very upset”,⁶⁷ reported General Franz Lang.

The entire identification processes of the corpses then moved to the forensics in Salzburg, where the victims haven been brought to by the helicopters.⁶⁸ It completely worked out: “Within half a day all mobile units had left Kaprun. Instead, we had sent two very trustful camera operators to the deployment site, of whom one

⁶¹ Cf. Lang 2017, part 1 / 19:00 minutes.

⁶² Cf. Lang 2017, part 2 / 21:50 minutes.

⁶³ Lang 2017, part 2 / 26:10 minutes.

⁶⁴ Lang 2017, part 2 / 10:03 minutes.

⁶⁵ Cf. Lang 2017, part 2 / 12:21 minutes.

⁶⁶ Cf. Lang 2017, part 2 / 13:13 minutes.

⁶⁷ Lang 2017, part 2 / 12:21 minutes.

⁶⁸ Cf. Lang 2017, part 1/ 21:00 minutes.

was from the ORF regional studio in Salzburg and well known to us, in advance, the second one was one member of our own camera crew. The photo- and film material which the two had conducted we delivered to all media – and to every single medium in the equal extent.”⁶⁹

2.3 Treatises on practical and legal basics of crisis management

2.3.1 Disaster

The crisis that accompanies natural or men-induced emergency situations is embedded into a certain set of conditions to which legal and other scientific literature refers as “disaster”.

The features of that certain set of conditions are perceived in this paper according to the Austrian Standards Institute’s definition of a disaster: “Ereignis, bei dem Leben oder Gesundheit einer Vielzahl von Menschen, die Umwelt oder bedeutende Sachwerte **in außergewöhnlichem Ausmaß gefährdet** oder geschädigt werden und die Abwehr oder Bekämpfung der Gefahr oder des Schadens **einen durch eine Behörde koordinierten Einsatz der dafür notwendigen Kräfte und Mittel erfordert**.”⁷⁰

Accordingly, the main features of the disaster are **the exceptional extent of the hazardous situation**, and the fact, that individuals are such overwhelmed by it, that **a coordinated deployment of the representatives of national or regional offices is necessary**. This vast definition, of course, encompasses many kinds of events. That is, why the Austrian legal expert Peter Bußjäger calls the European perception of “disaster” multilayered.⁷¹

Regarding the present issue, this doesn’t need to be discussed in greater detail. Noteworthy is rather the state of the disaster as one crucial point of the crisis’ anatomy which will become clearer with the introduction of Steven Fink’s crisis stages in chapter 3.

2.3.2 Crisis

I prefer the definition of Regina Lundgren and Andrea McMakin in their work *Risk Communication: A Handbook for Communicating Environmental, Safety, and Health*

⁶⁹ Lang 2017, part 2/ 13:13 minutes.

⁷⁰ Austrian Standards Institute 2011, article 2.49.

⁷¹ Bußjäger 2003, page 1.

Risks.⁷², as it does not express a negative effect of a crisis in advance: “A crisis is a turning point that will decisively determine an outcome.”⁷³

The most other definitions of a crisis emphasize the (possible,) negative impacts of a crisis. To these I account the definition of Kathleen Fearn-Banks: “A crisis is a major occurrence with a potentially negative outcome affecting the organization [...]. A crisis interrupts the normal business transactions and can sometimes threaten the existence of an organization.”⁷⁴

As I prefer the definition of the ***crisis as a turning point***, I agree with the position of Timothy Coombs proposed in his book *The Handbook of Crisis Communication* that reads, that the definition of the crisis as either a threat or an opportunity is “a function of the outcomes of crisis management rather than a defining characteristic of crisis.”⁷⁵

2.3.3 *Crisis communications*

The process of crisis communications can only be understood by comprehending the process of communication itself very well. Therefore, I will first determine the expression “communication”: Communication is dominated by the sender and the receiver, who will might switch their roles back and forth.⁷⁶ The sender sends a message, which is received by the receiver. The content the sender has intended, has often changed by the interpretation of the receiver. He responds with a feedback to the communicator/sender about the message.⁷⁷ And, finally, “[c]ommunication is the essence of crisis management.”⁷⁸ Regarded as this, I will discuss it in detail.

⁷² Lundgren, Regina & McMakin, Andrea (2004): Risk Communication: A Handbook of Communicating Environmental, Safety, and Health Risks.

⁷³ Lundgren & McMakin 2004, quoted according to Walaski 2011, page 8.

⁷⁴ Fearn-Banks 1996, page 1.

⁷⁵ Coombs 2010, page 19.

⁷⁶ Cf. Walaski 2011, page 11.

⁷⁷ Cf. Walaski 2011, page 11.

⁷⁸ Coombs 2010, page 25.

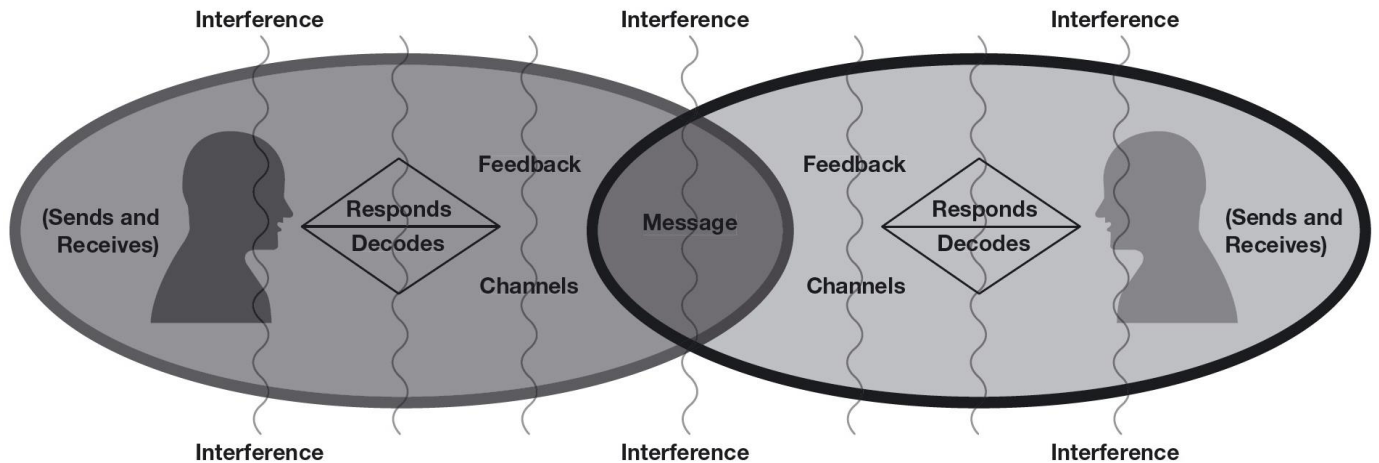


Fig. 1: Basic principles of communication. Sender-receiver-model.

Source: Walaski (2011, page 12)

The most useful definition of crisis communications for the present paper has been given by Pamela Walaski, who is a theoretical successor of Regina Lundgren and Andrea McMakin as well as of Peter M. Sandman.⁷⁹

With her work *Risk and Crisis Communications. Methods and messages*, she explains crisis communications in difference to risk communication: While **risk communication is a process before an emergency occurs**, that is mainly concerned with the development of relationships with the audiences, with sharing information about the risks, and with establishing consensus on the strategies to cope with the risk, **crisis communications are determined by the emergency event and the constraints in time, that accompany every emergency**.⁸⁰

Walaski describes the main characteristics of crisis communications as follows:

“Because of the urgency of the situation, the time needed to develop a partnership with audiences and come to consensus on appropriate actions is rarely available. In addition, the time needed to develop goals and objectives for the messages is short.”

⁸¹

⁷⁹ Cf. Walaski 2011, page xii.

⁸⁰ Cf. Walaski 2011, page 9.

⁸¹ Walaski 2011, pages 9, 10.

2.3.4 Freedom of information

Regina Lundgren and Andrea McMakin highlight in their publication on *Risk Communication*, that a not further introduced “risk communication professional”⁸² has noted on the issue of crisis communications: “You only give the audience the information they need to get them to leave. Anything else is extraneous.”⁸³

With this assertion the risk communication professional has expressed the position that is challenged with the present paper: Is it satisfactory to provide as much information to the public, that the average member of this society is able to survive? If so, how will the responsible official get to know which degree of information the different audiences need to survive?

To answer this crucial question, I will employ the Article 19 of the Universal Declaration of Human Rights⁸⁴ which reads: “Everyone has the right to freedom of opinion and expression; this includes the freedom [...] **to seek, receive and impart information** and ideas through any media and **regardless of frontiers.**”

By applying this article of the Universal Human Rights’ Declaration to the specific conditions of crisis communications, one will comprehend, that frontiers can be set to information by other requirements of the same Declaration.

2.3.5 Right to life, liberty and security of person

Everyone’s “right to life, liberty and security of person”⁸⁵ is warranted with the Article 3 of the Universal Declaration of Human Rights. A trial in the European Court of Human Rights constituted a precedential case in 2008: The chamber members heard a case of six Russian civilians⁸⁶ against the Russian state. The Russian Federation

⁸² Lundgren / McMakin 1998, page 18.

⁸³ Lundgren / McMakin 1998, page 18.

⁸⁴ United Nations, General Assembly 1948, Article 19.

⁸⁵ United Nations, General Assembly 1948, Article 3.

⁸⁶ Cf. European Court of Human Rights 2008, page 2.

was accused to have violated the Articles 2 ⁸⁷, 8 ⁸⁸ and 13 ⁸⁹ of the European Convention on Human Rights, of which Article 2 equals the Article 3 of the Universal Declaration of Human Rights in its intentions. The European Court of Human Rights, finally, decreed as follows: “[For these reasons, the court unanimously] holds that there has been a violation of Article 2 of the Convention in its substantive aspect on account of the State’s failure to discharge its positive obligation to protect the right to life[.]” ⁹⁰

Evidently, the European Court’s decision highlights the definition of the state as a provider of the fundamental right to life. As shown up with the quotation of the articles of the European Convention for the Protection of the Human Rights and Fundamental Rights, which were summoned to court, from the beginning of this trial, there has been no intention to enlarge upon the aspects of freedom of information itself. With this paper, the right to life shall be regarded in this pure definition, further aspects of the fundamental rights will be added separately.

2.3.6 Right to protection of personal data

The origin of the idea to protect personal data can be dated back to the 10th December 1948, when the General Assembly of the United Nations adopted the “Universal Declaration of Human Rights” in Paris. ⁹¹ Article 12 of the Declaration reads: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” ⁹²

⁸⁷ Council of Europe 1950, Article 2.1: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

⁸⁸ Council of Europe 1950, Articles 8.1 and 8.2: „Art. 8, par. 1: Everyone has the right to respect for his private and family life, his home and his correspondence. Art. 8, par.2: There shall be no interference by a public authority with the exercise of this law except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.”

⁸⁹ Council of Europe 1950, Article 13: “Everyone whose rights and freedoms as set forth in this Convention

⁹⁰ European Court of Human Rights 2008, page 42.

⁹¹ Cf. United Nations, General Assembly 1948.

⁹² United Nations, General Assembly 1948, Article 12.

For instance, the means of communication were less, compared to today's completely interconnected world-society, therefore, this fundamental right was supposed to be developed further. Nevertheless, it was once more reinforced with the *International Covenant on Civil and Political Rights* adopted by the General Assembly of the United Nations in 1966 (entry into force 1976), which almost verbatim overtook the article 12 of the Universal Declaration of Human Rights.⁹³ The right to protection of personal data was developed not before the European Parliament and the Council of the European Union adopted the so-called *Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data* in 1995. The Directive says: "In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data."⁹⁴ The giant stride towards a constraint of these rights' protection follows in article 3: "***This Directive shall not apply*** to the processing of personal data: - [...] in any case ***to processing operations concerning public security, defence, State security*** (including the economic well-being of the State when the processing operation relates to State security matters) [...]"⁹⁵ On 25th March 2018, its successor, the EU General Data Protection Regulation, will be put into force. Article 2 of the new Regulation states: „***This regulation does not apply*** to the processing of personal data: [...] (d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences, the execution of criminal penalties, ***including the safeguarding against and the prevention of threats to public security.***"⁹⁶ The inference of it can be twofold: Either the actions moved by the competent authorities are considered as prevention of threats to public security regardless of the threats' origin, then the crisis induced by a natural disaster could rescind the right to protection of personal data; or the prevention of threats to public security is strongly linked to the preceded criminal offences, then the crisis induced by a natural disaster is excluded from the definition and the right to protection of personal data must be applied during crises.

⁹³ Cf. United Nations, General Assembly 1985, page 139, Article 17, paragraphs 1 & 2.

⁹⁴ European Parliament & Council of the European Union 1995, page 38, Art. 1, par. 1.

⁹⁵ European Parliament & Council of the European Union 1995, page 39, Art. 3, par. 2.

⁹⁶ European Parliament & Council of the European Union 2016, page 109, Article 2, par. 2.

Recital No. 4 of the new EU General Data Protection Regulation serves to summarize these insights: “**The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights**, in accordance with the principle of proportionality.”⁹⁷ – The present paper discusses this area of tension.

2.3.7 Right to property

The right to property is clearly defined with the Article 17 of the Universal Declaration of Human Rights: “Everyone has the right to own property alone as well as in association with others.”⁹⁸

Additionally, the right to property is established in the *First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms*. With its article 1, the Protocol again points to the right of everyone to personal possession. But, the definition has developed to more exactness, as in an additional sentence the member states bind themselves to the promise, that “[n]o one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”⁹⁹

Evidently, there are a few limitations to the right to possession which concern the utilization of private property for the sake of the public. Consequently, the right to possession is might not useful for the issue in my concern. Nevertheless, we will keep in mind to try testifying further evidence of the right to possession in fundamental crisis rights.

2.4 Reasoning the election of the specific fundamental rights

The state has an obligation to protect the society from hazards, in German this specific obligation is called *Schutzpflicht*. The obligation to protect, the *Schutzpflicht*, is an obligation which requires the placement of governmental acts.¹⁰⁰ Dogmatically, the sources of these **positive obligations** are the right to life¹⁰¹ (Art. 2 European Convention for the Protection of Human Rights and Fundamental Freedoms; Art. 3 Universal Declaration of Human Rights), the right to respect for private and family life

⁹⁷ European Parliament & Council of the European Union 2016, page 2, recital 4.

⁹⁸ United Nations, General Assembly 1948, Art. 17, par. 1.

⁹⁹ Council of Europe 2002/1952, Article 1, page 31.

¹⁰⁰ Cf. Berka 2013, page 61.

¹⁰¹ Cf. Berka 2013, page 61.

¹⁰² (Art. 8 European Convention for the Protection of Human Rights and Fundamental Freedoms), and the right to property ¹⁰³ (Art. 1 First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms). Additionally, I consider the right of freedom to information (Art. 10 European Convention for the Protection of Human Rights and Fundamental Freedoms) as the most important in relation to civil rights in crisis situations, although it is not accounted to the rights which are guaranteed as fundamental rights. ¹⁰⁴ The right to the access and to the reception of information is named ***passive freedom of information***. ¹⁰⁵ Dogmatically, the passive freedom of information must be subordinated under the legally negative obligations. Legally negative obligations exclude the state's influence out of the private sphere of citizens. With regard to the right to freedom of information that means, everyone has „das Recht, sich um Informationen zu bemühen, und darf dabei vom Staat nicht unverhältnismäßig beeinträchtigt werden.“ ¹⁰⁶ Interventions of the government into the right to freedom of information are, consequently, extensively excluded. Nevertheless, there can be exceptions. ¹⁰⁷ If the judicature allows interventions, then only under the condition, that these must be proportional. The proportionality of the actions is measured by the extent to which other sources of information could have offered the same information, and by the consequences the persons who have been interested in that information had to suffer, if they had not get this information. ¹⁰⁸

More evidence for the immediate protection of the right to life can be found in the Covenant on Civil and Political Rights which may was ratified by Austria already two years after its entry into force, in 1978.

The members to the Covenant agree on the importance of the above listed fundamental rights, simultaneously, they call one exception of the standard rules “in

¹⁰² Cf. Berka 2013, page 61.

¹⁰³ Cf. Berka 2013, page 61.

¹⁰⁴ Conclusion according to Grabenwarter's classification, cf. Grabenwarter 2009, pages X – XIII.

¹⁰⁵ Cf. Grabenwarter 2009, page 269.

¹⁰⁶ Grabenwarter 2009, page 269.

¹⁰⁷ Cf. Grabenwarter 2009, page 272.

¹⁰⁸ Cf. Grabenwarter 2009, page 283.

case of emergency".¹⁰⁹ The exception is but not applicable to the right to life as Art. 4, paragraph 2, states¹¹⁰ as it has as well to be maintained in emergency cases. For the other fundamental rights that are discussed with the present paper, no exceptional rule has been set by the Covenant.

Nevertheless, the Covenant shows up, that fundamental rights are disputable in crisis cases as it contains the hint on special provisions which, obviously, become necessary in case of emergency.

Further emphasis on the democratic freedoms and their link with crisis management issues is given by Detraz and Peksen. The scientists in their investigation of the impact of disasters on women's rights establish the conclusion, that democratic systems are much more likely to cope with a crisis without huge losses of living- and health-standards or economic losses.¹¹¹

¹⁰⁹ United Nations, General Assembly 1985, Art. 4 par. 1, page 134.

¹¹⁰ Cf. United Nations, General Assembly 1985, Art. 4 par. 2, page 134.

¹¹¹ Cf. Detraz / Peksen 2017, page 166.

3 Sources and applied scientific methods

The recent state of the research body containing issues regarding crisis communications is huge: Solely, the search item “communication during disasters” yields 10.659 results in the scientific online-library Scopus.¹¹² That the disaster of Kaprun was a challenge for forensic scientists is obvious, as the results for the search item “Kaprun Cable Car Disaster” are mainly articles concerned with the forensic aspects of the disaster.

It is obvious from the review of the existing research body that is introduced below, up to the present, it has far more been thought about *how* coping with the crisis rather than about the ***basis of the strategies for coping*** with the crisis, straightly the *what* of the coping procedure.¹¹³ With the following subchapters, space will be given to the state of the recent research body, furthermore, to reasons for the utilization of the empirical data on both cases of concern, and this application will be explained.

3.1 Introduction to the recent research body

Evidently, the huge field of crisis communications research is itself fully differentiated. There are theories and models applying to Federal disaster relief organizations,¹¹⁴ there are scientists concerned with crisis communications applying critical discourse analysis on it who themselves have a social sciences and social research education,¹¹⁵ there even exists an own branch of research on the specific requirements of single disaster relief units like the Red Cross and Red Crescent Societies and, accordingly, their specific crisis communications standards.¹¹⁶ One

¹¹² See the Scopus website for verification: [https://www.scopus-com.uaccess.univie.ac.at/results/results.uri?sort=plf-f&src=s&st1=Communications+during+disasters&st2=&sid=314C77E6ADE725CFA5E4D468811713E4.wsnAw8kcdt7IPYLO0V48gA%3a690&sot=b&sdt=b&sl=46&s=TITLE-ABS-KEY%28Communications+during+disasters%29&offset=3&origin=recordpage](https://www.scopus.com/uaccess.univie.ac.at/results/results.uri?sort=plf-f&src=s&st1=Communications+during+disasters&st2=&sid=314C77E6ADE725CFA5E4D468811713E4.wsnAw8kcdt7IPYLO0V48gA%3a690&sot=b&sdt=b&sl=46&s=TITLE-ABS-KEY%28Communications+during+disasters%29&offset=3&origin=recordpage) (April 19th 2017).

¹¹³ Cf. Arnauld 2015, pages 288 – 289.

¹¹⁴ Exemplum gratia: National Crisis and Disaster Protection Management (2007): Richtlinie für das Führen im Katastropheneinsatz.

¹¹⁵ Exemplum gratia: De Vocht, Melanie et alii (2016): The impact of communicating uncontrollable risks to the public.

¹¹⁶ Exemplum gratia: Fussel Sico / Collins / Zoch (2010): Through the looking glass: A decade of Red Cross crisis response and situational crisis communication theory.

branch of research seems to be specific for US-American research on crisis communications which is the one I decided to employ mainly for this paper. This scientific branch of crisis communications is concerned with the adaptation of crisis communications research results on the requirements of companies and businesses. Nevertheless, I'm convinced, that it is possible to deduce recommendations for the entire body of disaster relief forces, independent of its economical organization.

3.2 Introduction to the processed literature

To the distinguished pioneers of that branch belong Kathleen Fearn-Banks, Regina Lundgren, Peter M. Sandman ¹¹⁷ and Steven Fink. The most important paper to start the research and to find these theorists was a book by Pamela Walaski published in 2011, with which she summarizes the historical development of communications science and of the science of risk and crisis management, in the first two chapters. Furthermore, I mainly used the search engine of the University of Vienna and the search engine Scopus.

The crucial insights of this investigation are discussed within the following three sections: The exploration of the treatment of fundamental rights during crises has started not long ago, as the first treatises on this issue were published in the 21st century. To those I account the work of Nicole Detraz and Dursun Peksen *In the Aftermath of Earth, Wind, and Fire: Natural Disasters and Respect for Women's Rights*, which was published in the Human Rights Review in 2017 ¹¹⁸, and the anthology *Annotations on disaster law* (German original: Anmerkungen zum Katastrophenrecht, 2008 & 2009) where Klaas Hendrik Eller has published his essay on *Fundamental rights in disaster prevention* (German original: Grundrechte im Katastrophenschutz). ¹¹⁹

In 1986, Steven Fink published his model on the four stages of a crisis which are cited up to the present, as they are especially useful to understand the development of a crisis. Therefore, my analysis envelops literature from 1986 to the present, with one exception, that is a standard work of law, in its second edition from 1905: *The system of subjective public rights* (German original: *Das System subjektiver*

¹¹⁷ Cf. Walaski 2011, page xii.

¹¹⁸ Cf. Detraz/Peksen 2017.

¹¹⁹ Cf. Eller 2008 & 2009.

öffentlicher Rechte) by Georg Jellinek ¹²⁰ which I will employ to explain the differences of the legal perception of citizens actively or passively participating in the society.

I will link the above mentioned legal insights to the findings of Peter M. Sandman and Steven Fink, both veterans of the Three Mile Island Accident in the nuclear plant, and communication experts like Timothy Coombs. ¹²¹

First, I will employ the four stages of a crisis according to Steven Fink to entangle these with the structure of the deployments during the disasters of Kolontár and Kaprun, consequently, I will sort the two deployments according to Fink's stages, and, finally, I will match the investigated stages of the two real disasters to the legal standards of the international community.

3.2.1 Stephen Fink's four *stages* of a crisis

As already mentioned in chapter 2, I consider the process of crisis communications as a process which can be prepared, in advance. This assumption is as well included in Fink's four stages of a crisis, which are the proposition for Peter Sandman's instructions for crisis communications. Established in 1986, they are still regarded to be "a useful classic". ¹²²

Steven Fink was part of Pennsylvania's administration in 1979 – and when the Three Mile Island power plant experienced a melt-down, he appeared to be at the forefront of the governmental crisis management. ¹²³ Seven years later, in 1986, Steven Fink published his experiences from the Three Mile Island Accident – accompanied by a useful framework for crisis management – in a book which is cited here in an edition from 2002. Along with the framework, Fink has sorted the crisis into four stages what seemed to be revolutionary in the days of the first edition. Meanwhile, a proper amount of classifications has followed. For example, the three-step-classification of Timothy Coombs ¹²⁴ or the Fearn-Banks approach which reads: (a) Detection; (b) Preparation; (c) Containment; (d) Recovery; (e) Learning. ¹²⁵ The approach seems to

¹²⁰ Cf. Jellinek 1905.

¹²¹ See references out of the anthology Coombs, W. Timothy / Holladay, Sherry J. (eds.): *The Handbook of Crisis Communication*, 2010.

¹²² Coombs 2010, page 21.

¹²³ Cf. Fink 2002/1986, page 2.

¹²⁴ Cf. Coombs 2010, page 22.

¹²⁵ Cf. Fearn-Banks 1996, page 4.

emphasize the impact of the initial phase too strongly. As the Austrian example in this thesis shows, the prodromal phase is probably almost not or even not existent. That is why Steven Fink in his model keeps the initial phase very short. He distinguishes the four stages of the crisis as follows: ¹²⁶

(a) Prodromal

Remember, we have defined the crisis as a “turning point”. The first stage Steven Fink readily names the crucial point as the management of the prodromal phase decides over the following events within the crisis cycle: “[I]f the turning point, the prodrome, is missed entirely, the acute crisis can strike with such swiftness that the so-called crisis management after the fact is, in reality, merely damage control.” ¹²⁷ The consciousness of this fact can prevent greater losses, therefore, it is so important. Another theorist, Pamela Walaski, summarizes the impact of that first stage as follows: “An organization is able to identify clues or hints that a crisis is about to occur.” ¹²⁸

(b) Acute

The acute crisis stage Steven Fink calls “the point of no return” ¹²⁹. This stage is the most obvious for the public, as it is the stage with the events following to each other much more quickly than in all other stages, and the intensity of the isolated events being more intense than in other phases. ¹³⁰

(c) Chronic

The chronic stage sets in when the worst phase is over. ¹³¹ It is the phase that can last for years, even decades, it encompasses an indefinite period. ¹³² During this chronic stage of a crisis, there is as well time for recovery and self-analysis. ¹³³

(d) Resolution

¹²⁶ Cf. Fink 1986/2002, page 20.

¹²⁷ Fink 1986/2002, page 21.

¹²⁸ Walaski 2011, page 10.

¹²⁹ Fink 1986/2002, page 22.

¹³⁰ Cf. Fink 1986/2002, page 23.

¹³¹ Cf. Fink 1986/2002, page 23.

¹³² Cf. Fink 1986/2002, page 24.

¹³³ Cf. Fink 1986/2002, page 24.

The final stage, in Fink's model is called resolution. It is the stage the crisis manager aimed at since the acute crisis stage. ¹³⁴ – Empirically, it is as well the announcement of the emerging next crisis, as the character of crises is historically cyclical. ¹³⁵ The crisis and its extent cannot be estimated, in advance, but analyzed in the aftermath to prepare for probably upcoming next ones. ¹³⁶

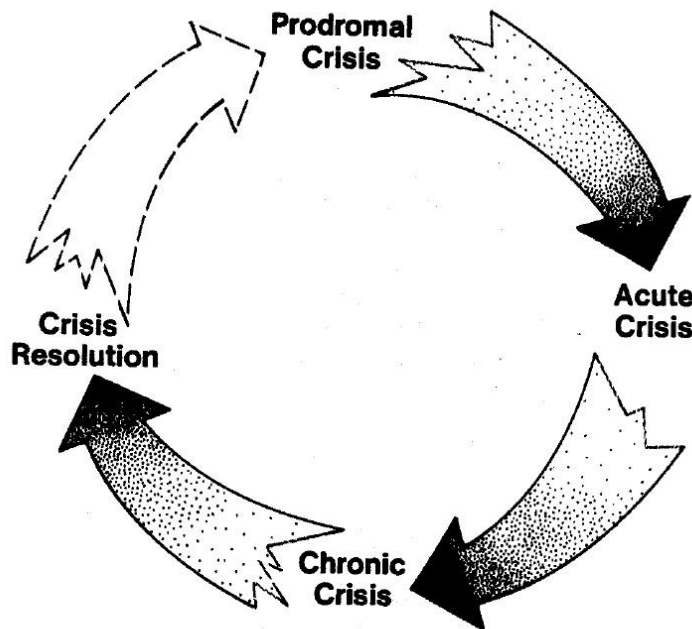


Fig. 2: The four stages of a crisis according to Steven Fink.

Source: Fink (1986/2002, page 26)

3.2.2 Peter M. Sandman's action patterns to cope with collective outrage during a crisis

Although the definition of **risk = hazard + outrage** is strongly linked to the name Peter M. Sandman, this approach has originally been developed by Baruch Fischhoff and Paul Slovic. ¹³⁷ But it was, finally, popularized by Peter M. Sandman. ¹³⁸ With certainty, Sandman has also further developed the concept.

¹³⁴ Cf. Fink 1986/2002, page 25.

¹³⁵ Cf. Fink 1986/2002, page 25.

¹³⁶ Cf. Fink 1986/2002, page 28.

¹³⁷ Cf. Lundgren / McMakin 1998, page 21.

¹³⁸ Cf. Lundgren / McMakin 1998, page 21.

With that clear definition, Sandman has established a worthwhile hands-on approach for the resolution of crises, especially crises within companies.¹³⁹ Meanwhile, he has produced 25 procedural recommendations on crisis communications only that encompass the acknowledgement of uncertainty, the acceptance of fear to a certain degree, and the mobilization of layers to take actions themselves.¹⁴⁰

The approach is convincing as it testifies a long period of practical experience which Peter Sandman has collected during his employment as a professor at the Rutgers University between 1977 and 1995 that he used, readily, to start his career structure as consultant.¹⁴¹

Sandman defines crisis communications as a part of risk communication which is special because it is marked by the fact that both hazard and outrage are high.¹⁴² The techniques of successful crisis communications can be learned, Sandman is convinced. He, readily, sorts the main task of crisis communications into six areas which are the following:¹⁴³

- (a) Information content
- (b) Logistics/media
- (c) Audience assessment
- (d) Audience involvement
- (e) “Metamessaging”
- (f) Self-assessment

As the list suggests, the importance to consider emotional implications for crisis communicators is stressed. Additionally, this approach asks but does not answer the question for the “quality” of audiences. That is due to the fact, that with that sensitive approach the composition of the audience becomes very important.

In this context, Peter Sandman’s explanations are useful for estimating the weight of fundamental rights standards for the crisis communications situation.

¹³⁹ The view that emphasis lies on consulting companies is encouraged by Peter Sandman’s own assertions, exemplum gratia: Sandman 2009, online access point.

¹⁴⁰ Cf. Lanard & Sandman 2004 b, page 3.

¹⁴¹ Cf. Sandman 2009, online access point.

¹⁴² Cf. Landard & Sanman 2004 b, page 2, annotation: That theory holds for the model “risk = hazard + outrage”.

¹⁴³ Sandman 2004, online access point.

3.3 Scientific methods to investigate the research questions

3.3.1 Guided interview

The interview with General Franz Lang, Director of the Federal Criminal Police Office with its headquarter in Vienna, was a guided interview. It was conducted on 5th May 2017, and released after a personal review by General Franz Lang on 7th June 2017. The questions for the guided interview were prepared according to my first investigation of the existing literature. These were:

- (a) The fire in the cable car tunnel near Kaprun erupted on 11th November 2000. When exactly have you been informed about it?
- (b) You then overtook the official capacity of the commander of the criminal police Salzburg. – Was it evident from the beginning, that you will act in this capacity? Or did you take part in establishing a high command?
- (c) According to the reports of the ORF TV station, the heads of the relief force units didn't seem to have agreed before they spoke to the representatives of the media. I found an interview of the ORF with Karl-Heinz Wochermayr, head of the base unit at the Kitzsteinhorn [top station; annotation] where he is reporting with great exactness on the actions at the deployment site (90 forensic experts, 50 members of the Austrian armed forces, and so on being on the site). – How was the communication within the high command going?
- (d) How many meetings did the high command make? – On the day of the disaster? On day 2? On day 3?
- (e) Obviously, you made the decision to communicate directly and honestly. Has there been any crucial point at which you knew with certainty, that you will act according to the standards of the right to freedom of information? When was it?
- (f) Two researchers of the faculty for safety Analysis at the ETH Zurich found out, that the underlying structure of the risk management has a strong impact on the final risk communication procedure? Thinking about your experiences with Kaprun, would you agree with these insights? Or was it a situational dependent decision?

(g) If you were thrown back to the Kaprun disaster today, what would you make better?

Evidently, these questions have been adopted and supplemented during the talk. Franz Lang invested two hours of a Friday afternoon to answer the questions conscientiously. I recorded the entire talk with a voice tracer. The result is published in the appendix of this paper as a transliterated text of 18 pages.

3.3.2 Secondary analysis of text material on Kolontár

In addition to the interview with General Franz Lang, there is a second set of data regarding Kolontár. As literature on the disaster is scarce, Ulrike Lunacek, vice-president of the European Parliament and member of the European Free Alliance in the European Parliament, agreed to submit the material the European Commission and the European Parliament have collected on Kolontár. It arrived in March 2017 as a huge body of 17 e-mails which I then sorted. Out of altogether 22 documents, there are 18 documents relevant for the present paper. Four were sorted out as they appeared to be only important for the internal co-ordination of the European Union's institutions and their representatives, they were but not matter-of-fact-reports on the disaster itself.

I raised the request to Ulrike Lunacek personally when I met her at the International Conference of the Diplomatic Academy (DASICON) 2017 in Vienna. I announced verbally, that I will assemble the inquiry with a few concrete questions that fit with my research issue.

As announced at the DASICON 2017, I afterwards submitted the following questions via e-mail:

- (a) The dam ruptured on the 4th October 2010 at a retention basin of the Mal Ltd. in Ajka, Western Hungary. The first report I will employ for my research was published on 6th October by Gregor Mayer, editor at the daily newspaper Der Standard. When and through which medium have you been informed about the disaster?
- (b) That the waste water of the alumina production was arsenic laden – far above the legal threshold in Austria – is shown up by a report of the

Bundesumweltamt Wien which is attached to this e-mail. Have you been informed about the arsenic pollution by Greenpeace, as the organization was central in exploring this pollution and published its results in February 2011? Or have you been informed before, and – if so – through which stakeholders?

- (c) Has there been a direct face-off between officials of the Hungarian government and the European Parliament or European Commission? If so, what do you about it? Maybe there have been established a few documents which are accessible for a research project?

The questions have not been answered by Ulrike Lunacek personally but by her assistant. He answered to question (a), Ulrike Lunacek has been informed about the disaster by a release of the Austrian Press Agency (APA) on 5th October 2010. Shortly afterwards, Ulrike Lunacek has been informed by a Hungarian colleague in the European Parliament. Along, the assistant answered question (b): While seeking out the correspondence on the arsenic pollution, he became quite sure, that Ulrike Lunacek has been informed about it not before the press release of Greenpeace in February 2011. Question (c) has become obsolete as the documents show a brisk communication between representatives of the Hungarian government involved into the European Union's politics and other EU officials.

The assistant, moreover, asked me for protecting the persons who have been involved into the investigations on this disaster by hiding their personal data. Of course, I will follow this request by publishing the material only under the professional functions of the authors, instead of their names.

3.3.3 Classifying the obtained material to conduct two content analyses

Finally, to turn the 18 sources into account, I will conduct a content analysis of the documents which will enable me to interpret the data objectively and precisely. As the material is already such comprehensive, I will not add further data to the population.¹⁴⁴ The period for the population's origin, therefore, is fixed from the period of the first investigations immediately after the disaster in 2010, to the memorial on the occasion of the five-years-anniversary's.¹⁴⁵

¹⁴⁴ The method is established in accordance with Neumann 2013, for the expression „population“ cf. Neumann 2013, page 377.

¹⁴⁵ Cf. Lunacek 2015, page 1.

Sections of the text-data are sorted into a table to match questions that examine the fundamental rights issues by a latent investigation.

Additionally, the method of content analysis must be applied to the literature regarding Kaprun. I have collected the three mainly important sources of information of which the first and foremost is the above described interview with General Franz Lang, now Director of the Federal Office of the Criminal Police and then high commander for the police forces at the deployment site of Kaprun. Further on, I will add the publication of Harald Meyer on the forensic organization of the coping phase of the Kaprun disaster ¹⁴⁶ and the publication of Chris Beale who has dissected the disaster among others to make it accountable for the process industries. ¹⁴⁷

3.3.4 Sorting the considered disasters according to Fink's four stages of a crisis

The planning for a crisis, Steven Fink argues, is so important as it enables the natural or legal person to reduce the risk and uncertainty of the situation. ¹⁴⁸

Consequently, the person will be in charge to control the shape of the outcome of the crisis. ¹⁴⁹ Simultaneously, the experience with disasters teaches that no crisis equals another. ¹⁵⁰ Meanwhile, the crisis is considered as “a fluid, unstable, dynamic situation”. ¹⁵¹

The two crises regarded with the present paper will show up that Steven Fink was right with his guess, that not every crisis indeed has all four stages, but it as well cannot have more. The four stages of Steven Fink (prodromal, acute, chronic, resolution) will be applied to both courses of events. By sorting the crises to the stages, I will be enabled to abstract the crisis situations from the immediate event and to consider the underlying structure, instead.

¹⁴⁶ Cf. Meyer 2003.

¹⁴⁷ Cf. Beale 2002.

¹⁴⁸ Cf. Fink 1986/2002, page 15.

¹⁴⁹ Fink 1986/2002, page 15.

¹⁵⁰ Cf. Sandman 2004, online access point, and Fink 1986/2002, page 21.

¹⁵¹ Fink 1986/2002, page 20.

4 Presentation of the processed data

To get into detail of the present issue on two specified cases, one in Austria, one in Hungary, I have collected data by conducting one guided interview regarding Kaprun, and by gathering data on Kolontár which were collected by the European Parliament and the European Commission to investigate supposed cases of negligence by Hungarian authorities. With the following paragraphs, I will explain how the collected data will be processed to meet the research questions.

4.1 How the data will be classified

As explained in chapter 3, I will ask questions to the material that refer to fundamental rights issues and are useful to investigate their objectives latently. I will enter the sections of the text-data which are fitting with the question into the tables that are shown below. To make Kaprun comparable with Kolontár, I will ask the same questions to the interview with Franz Lang, and – to meet the standard of objectiveness – I will add the content of two scientific publications which are concerned with the Kaprun disaster and its aftermath.

It is worth noting, that the employed sources largely differ. The extended interview with Franz Lang serves as such an important and precise source of information that it is not possible to meet its quality by literal sources.

Additionally, I got embarrassed with acquiring independent and detailed information on the course of Kolontár. This led to the decision to ask Ulrike Lunacek for help who has herself not been there before the acute stage of the disaster was over. Consequently, this comparison is not accurate, but I did not find a better solution. The question I will ask to both materials are:

- (a) Which phases have been crucial for the European Union's legal standards?
- (b) Which phases have been crucial regarding other legal standards of International law?
- (c) Has there been an open communications policy during the crisis?
- (d) Have interventions by the international community been necessary?
- (e) Is the operational command's structure comprehensible for others?

4.2 Classifying the data on the red sludge disaster

Note, the entire population of useful documents of the European Union regarding Kolontár consists of 18 documents. To keep it lucid, I reduced the population to the papers that are the nearest to the disastrous event itself. Therefore, the documents on the fifth anniversary of the disaster were sorted out.

Furthermore, I need to remind of the requested protection of the personal data of EU staff that is involved into the investigations on Kolontár. I will follow this request by publishing the relevant material in the name of the professional function the author holds, with exception of one document that is named “Open Letter” and, therefore, was evidently published under the names of the Green Members of Parliament Rebecca Harms and Daniel Cohn-Bendit.

The population, now, consists of nine papers that are the most expressive ones, the last in the below list is a free electronic correspondence between members of the European Parliament which is quite useful for understanding the backgrounds. It is the latest one as it marks the start of new investigations against the owner of the red sludge reservoir that were initiated by Greenpeace in February 2011.

Consequently, the period of investigation runs very short: It starts with the first correspondence shortly after the disaster. The date of the disaster is the 4th of October 2010. The period ends with the correspondence mentioned above from February 2011.

The sections out of the references that point to the topic of the questions are verbatim sorted into the table below.

Information on the red sludge disaster in Hungary

- Question a** [MEM-STRA – 2010; page 1] “Nevertheless, it has to be pointed out that the Commission’s analysis identified some areas of concern regarding the correct implementation of different pieces of EU law, in particular Directive 2006/21/EC on the management of waste from extractive industries (EWD) and Commission Decision establishing a list of wastes (European Waste List).”
- [SEV-MEP – 2011] “We were there yesterday [...]. [...] the small stream nearby the reservoir is actually their ‘waste water canal’ so the discharge of the highly polluted waste water was ‘legal’. [...] We have to see if there is some regulation for such canals. Also as they add acid to decrease the pH.”
- Question b** [GRE – 2010] “Drawing lessons from the big environmental catastrophes, as the BP’s in the Gulf of Mexico or our disaster in Hungary, the installation of a new institution, a ‘Green Hague’ seems very important. The punishment of crimes against the humanity made by arms belongs to the authority of the International Court of Hague. The consequences of environmental disasters do not stop at the borders and endanger millions of people in Europe and elsewhere. “
- Question c** [MEM-C – 2010; page 1] “***While the causes of the disaster and its full impact are still under investigation...***” [the quoted speech was held on 19th October 2010, 15 days after the disaster; annotation]
- [MEM-C – 2010; page 1] “According to the information provided by the ***Hungarian authorities***, the red mud does not contain high concentrations of heavy metals and is therefore ***not considered as hazardous waste.***”
- [MEM-STRA – 2010; pages 2 - 3] “Commission Directive 2001/59/EC [...] states that ‘a substance or a preparation should also be considered corrosive if the result can be predicted, for example from strongly acid or alkaline reactions indicated by a pH of 2 or less or 11.5 or greater.’ The IPPC permit of the installation indicates that ***during the permitting procedure two samples of red mud were taken and pH values of 11.3 and 11.8 were measured.*** It should also be noted that the pH values measured in the samples of the rivers affected by the spill (up to 13.47) confirm the actual high alkalinity of the red mud. Based on the above facts [...] ***the Commission considers that this waste should have been classified as hazardous.***”

- Question d** [MEM-C – 2010; page 2] “On 7 October, the Hungarian authorities triggered the civil protection mechanism requesting an EU expert team. It was deployed immediately for a week in the affected area.”
[FIN-BRU – 2010] “There is still no legal basis for European environmental inspections. [...] National inspectors may well lack the necessary resources, competence and independence to ensure appropriate and comprehensive inspections, let alone provide a harmonized standard thereof.”
- Question e** [MEM-STRA – 2010; page 3] “The measures that the company and the Hungarian authorities have put in place for mitigating the impacts of the damage indicate that there has been an urgent immediate response, ***although at the moment the information provided does not allow for any conclusion as to the remediation of environmental damage.***”
[HA-CO – 2010; page 1] “[...] the disaster in Hungary highlights that there is not only a serious lack of full implementation and enforcement of relevant laws, but also that important gaps in current EU legislation remain.”
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Questions for the content analysis

- Question a Which phases have been crucial for the European Union's legal standards?
- Question b Which phases have been crucial regarding other legal standards of International law?
- Question c Has there been an open communications policy during the crisis?
- Question d Have interventions by the international community been necessary?
- Question e Is the operational command's structure comprehensible for others?

Population = list of sources

[AUP – 2010] AUSTRIAN POLITICIAN: Unglaublich: Die EU empfahl die Alu-Unfallfabrik in Ungarn als Vorzeigeanlage, Vienna, 2010.

[AUP-BRU – 2010] AUSTRIAN POLITICIAN IN BRUSSELS: Short briefing on red mud disaster in Hungary, Brussels, 2010.

[FIN-BRU – 2010] FINNISH POLITICIAN IN BRUSSELS: Questions on the red mud disaster in Hungary, face-off with the European Commission, Brussels, 2010.

[GRE – 2010] GREEN LEFT HUNGARY: Red mud disaster – at Kolontár, Devecser and Somlóvásárhely is just the beginning, Emergency Resolution, Budapest, 2010.

[HA-CO – 2010] HARMS, Rebecca / COHN-BENDIT, Daniel: EU-action on the Red Mud Disaster in Hungary, Open Letter of the The Greens | European Free Alliance, Brussels: European Parliament, 29th October 2010.

[MEM-C – 2010] MEMBER OF THE EUROPEAN COMMISSION: Red Sludge Catastrophe in Hungary, Speech towards the plenary of the European Parliament, Brussels: European Parliament, 19th October 2010.

[MEM-GER – 2010] MEMBER OF THE GERMAN LOWER HOUSE: Sachstandsvermerk zum Industrieunfall vom 4. Oktober 2010 in Ungarn, Bonn, 2010.

[MEM-STRA – 2010] MEMBER OF THE EUROPEAN POLITICAL STRATEGY CENTER: Follow-up of ENVI Committee meeting of 1 December 2010, Brussels, 2010.

[SEV-MEP – 2011] SEVERAL MEMBERS OF THE EUROPEAN PARLIAMENT: Hungarian plant still releasing toxic mud (Greenpeace). WQ by Green MEPs, correspondence on the investigation, Brussels / Budapest / Vienna, 2011.

Tab. 1: Content analysis of text sources on the Hungarian red sludge disaster.

4.3 Classifying the data on the cable car disaster

To turn the assertions of Franz Lang into account for this purpose – and to make it comparable with the data about Kolontár which I could obtain via the European Parliament - designated building-stones of the transliterated interview are herewith adapted to a classifying table. The same questions, have been asked above to utilize the Kolontár-data.

In addition to the interview, I will employ two further scientific essays that are concerned with the cable car disaster to warrant a quite objective view-point of the event.

In this case, in contrary to the material on Kolontár, the population is with altogether three sources small, while the period for its origin is long, in comparison: The Kaprun disaster happened in 2000, the first scientific article that is noteworthy for the present issues was published in 2002, the second in 2003, and, finally, the interview with the eyewitness Franz Lang was conducted in 2017.

Information on the cable car disaster near Kaprun

- Question a** [LA – 2017; part 2; 1:30 minutes] “At this check points, we simply have asked the driver who are his co-drivers. According to their information we compiled lists, and put them in the support- and information center for relatives in Kaprun. Back then, we have as well put these survivors lists online. Later, I have been accused for doing so. - That this is a breach of law. Yes, this is true, in all objectivity, because the drivers and their co-drivers in the leaving cars have not expressively signed that they are content with the publication.”
- Question b** The answer given to question (a) is relevant for European legal standards (General Data Protection Regulation) and for legal standards of international law, in general. Further discussion on this issue follows with chapter 4.4.
[LA – 2017; part 1; 13:28 minutes] “Of course, huge official delegations of all seven affected nations came to the deployment site. These were: Americans, Japanese, Slovenians, Dutchmen ... At the beginning, they tried to put us under huge pressure by communicating with the Ministry for Foreign Affairs.”
- Question c** [LA – 2017; part 1; 12:32 minutes] “Within this center the relatives got psychological support, they got all information from us before the media were informed. In advance to every media conference two of us went into the information- and support-center to talk to these relatives. For example, ***we confessed across the relatives: ‘We do currently not know how many people burnet inside the tunnel.*** This time, we are assuming that there are 140 victims.”
- Question d** [MEY – 2003, page 2] “Beginning with day 1, registration of missing persons was carried out. All persons leaving the skiing area were registered. [...] Telephone hotlines were installed and these telephone numbers made known by the international media. Central hotline operation was handled by GAST/ EPIC (Emergency Procedures Information Centre), situated at Munich international airport, Germany.”
[MEY – 2003, page 6] “In respect of the magnitude of the incident, we called in three experienced colleagues from the Munich Institute of Forensic Medicine to aid in carrying out autopsies.”
- Question e** [LA - 2017; part 1; 5:03 minutes] “The strategy was very strongly planned in advance. Arrived in Kaprun, we had immediately built an operational command, we constructed a political level within this command structure, and one level of experts, the mountain rescue, the Austrian Red Cross and

so on. With regard to the police forces' tasks, we had even invited the Bavarian police force to join the command – 37 victims were German citizens. The Bavarian police officers got their own desk within the command center with their own computer and so on.“

Questions for the content analysis

Question a Which phases have been crucial for the European Union's legal standards?

Question b Which phases have been crucial regarding other legal standards of International law?

Question c Has there been an open communications policy during the crisis?

Question d Have interventions by the international community been necessary?

Question e Is the operational command's structure comprehensible for others?

Population = list of sources

[BEA - 2002] Beale, Chris J.: Recent Railway Industry Accidents. Learning Points for the Process Industries, 2002.

[LA - 2017] Lang, Franz: Interview on the cable car disaster near Kaprun on 11th November 2000, 2017.

[MEY - 2003] Meyer, Harald J.: The Kaprun cable car fire disaster – aspects of forensic organisation following a mass fatality with 155 victims, 2003.

Tab. 2: Content analysis of text sources on the Austrian cable car disaster.

4.4 Discussion on the content analyses' results

4.4.1 Results of question a: affected legal standards of the European Union

Evidently, EU law has been affected in both cases. Regarding the red sludge disaster, the letter of the member of the European Political Strategy Center indicates, that the Directive 2006/21/EC on the management of waste from extractive industries (EWD) and the Commission Decision on wastes (European

Waste List) are at issue, here.¹⁵² Nevertheless, one member of the European Commission points out the institutional shortages which are predicted by the European legislation.¹⁵³

During the course of events in Kaprun, the right to the protection of personal data¹⁵⁴ – represented by the EU General Data Protection Regulation (2016) and its predecessor the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1995) - has been offended by the officials. Franz Lang himself as the high commander of the criminal police acknowledged, that the publication of the data of the movement of individuals [out of the valley in which Kaprun lies; annotation] should not have been permitted without their signature.¹⁵⁵

4.4.2 Results of question b: Affected legal standards of further international law

In reference to the protection of personal data during the cable car disaster, legal standards of further international law could as well have been activated. This mainly concerns the article 12 of the Universal Declaration of Human Rights which prohibits the interference into the privacy of persons¹⁵⁶, and the Article 17 of the International Covenant on Civil and Political Rights.¹⁵⁷ Constraints to this view are further discussed with chapter 5.2.2 of the present paper.

During the course of events in Kolontár, officials triggered a few legal standards that are set by international law, independently of the European Union's standards. The most noteworthy are the right to life which is protected expressively in case of emergency by the article 4 of the International Covenant on Civil and Political Rights¹⁵⁸ - and, strongly related to it, the right to information which is warranted by an

¹⁵² Cf. Member of the European Political Strategy Center 2010, page 1.

¹⁵³ Cf. Member of the European Commission 2010, page 5.

¹⁵⁴ In the present concern, the article is most important that states that consent must expressively be given by the subject that offers his data for proceeding for each and every proceeding procedure, separately. Therefore, the relevant article is: European Parliament & Council of the European Union 2016, art. 32, page 18.

¹⁵⁵ Lang 2017, part 2; 1:30 minutes.

¹⁵⁶ United Nations, General Assembly 1948, Art. 12.

¹⁵⁷ Cf. United Nations, General Assembly 1966/1976/1985, Art.17, page 139.

¹⁵⁸ Cf. United Nations, General Assembly 1966/1976/1985, Art. 4 & Art. 6, page 134: The Article 4 par. 1 acknowledges exceptions from the standards set by the International Covenant on Civil and Political Rights.

obligation to inform neighbor states comprehensively that is – according to the legal expert Andreas von Arnould – conscript into customary right ¹⁵⁹ since the Trail-Smelter-Decree from 1941. ¹⁶⁰

4.4.3 Results of question c: communications policies' openness

The Kaprun disaster is considered a paramount example regarding crisis communications. This view holds due to two contributions: One is the principle which is cited verbally in table 2: ***The qualified public, that means the relatives and strongly afflicted persons, is always informed as first.*** ¹⁶¹ The second contribution is ***the honesty, in general,*** ¹⁶² which is as well proved by the quotations in table 2.

The Kolontár disaster shows the negative outcome of maintaining a defensive viewpoint of crisis communications: The reluctant, ceasing way of publishing details on the course of events of this disaster increased uncertainty among both, the qualified public and the distant investigators of the European Union or of organizations like Greenpeace which becomes very obvious with this quotation: “Unfortunately, it was not clear for Greenpeace and also for us that the small stream nearby the reservoir is actually their ‘waste water canal’.” ¹⁶³

4.4.4 Results of question d: necessary interventions of the international community

During both disasters interventions of the international community have become necessary, evidently.

Article 4 par. 2 excepts a few articles; among them the Article 6 which states every person's “inherent right to life”.

¹⁵⁹ The expressions „customary international law“ or “customary right” express a certain branch of international law which is not inscribed anywhere, but it is the result of practical procedures on the one hand, and the subjective observation that the law has become customary by a legal conviction that made it necessary, cf. Beham / Fink / Janik 2015, page 45.

¹⁶⁰ Cf. Arnould 2005, page 284.

¹⁶¹ Cf. Lang 2017, part 1; 12:32 minutes.

¹⁶² This especially refers to the confession: “We do currently not know how many persons burned in the tunnel.”, Lang 2017, part 1; 12:32 minutes.

¹⁶³ Several Members of the European Parliament 2011, open correspondence via E-Mail.

The main difference of the necessary actions lies in the institutionalization of the help in the case of Kolontár by the European Civil Protection mechanism which has been activated back then.¹⁶⁴ While, in case of Kaprun no autonomously structured relief work had to be done but single elements were hired, instead, like the GAST / EPIC (Emergency Procedures Information Center) of the international airport Munich¹⁶⁵ for alleviating the enlisting of victims or the support by the Bavarian police in police forces task regarding the German victims of the disaster.¹⁶⁶

4.4.5 Results of question e: Transparency of the command structures

At this point, it has to be noted that a few members of the European Union during the subsequent investigations appreciated the efforts of the Hungarian authorities to provide appropriate disaster response.¹⁶⁷ Nevertheless, negligence of the Hungarian officials is reported repeatedly, especially with regard to transparency of the disaster relief forces work and the risk prevention standards during the prodromal phase of a disaster.¹⁶⁸ Additionally, the uncertainty caused by the careless information policy on own command structures is censured by the quotations in table 1.¹⁶⁹

Although, the surviving dependants of Kaprun are in the year 2009 still reported to fight for their right to an appropriate indemnity¹⁷⁰, the work of the relief forces must be called accurate: The high command and its sub-command-structure during the disaster response was visualized by a tile-figure.¹⁷¹ As the members of the high-command were already used to work together, the command's structure was clear to them and, consequently, quickly obvious to the public.¹⁷²

¹⁶⁴ Cf. Member of the European Commission 2010, page 2.

¹⁶⁵ Cf. Meyer 2003, page 2.

¹⁶⁶ Cf. Lang 2017, part 1; 5:03 minutes.

¹⁶⁷ Exempla gratia: Member of the European Commission 2010, page 1, & Member of the European Political Strategy Center 2010, page 1.

¹⁶⁸ Cf. Finnish Politician in Brussels 2010, page 1.

¹⁶⁹ Cf. Harms / Cohn-Bendit 2010, page 1, & Member of the European Political Strategy Center 2010, page 3.

¹⁷⁰ Cf. Godeysen 2009, online access point.

¹⁷¹ Cf. Lang 2017, part 1 / 11:17 minutes.

¹⁷² Cf. Lang 2017, part 1 / 02:50 minutes.

5 Processing the disasters of Kolontár and Kaprun to match the purpose of this paper

Chapter 5 will lead to an abstraction which enables the reader in a second step to gain insight into the importance of certain stages with emphasis on the fundamental rights' issue. Therefore, first, each of the two considered courses of events is modeled according to the four stages of a crisis established by Steven Fink. Secondly, the most important stages for the present issue are reasonably highlighted.

5.1 Sorting the two disasters according to Stephen Fink's four stages of a crisis

5.1.1 Dissecting the Austrian cable car disaster with the support of Fink's model

Prodromal

Regarding the Kaprun case, there was none prodromal phase at all. The following quotation of Franz Lang highlights this fact: "At the time of the fire outbreak, there were already 5.500 humans staying in this region. – Within one second, everything stood still. – And, the waiting people did neither know what happened, nor when they will be allowed to continue. While above at the upper end of the cable car tunnel a huge smoke cloud had already emerged, one realized nothing at all down in the valley. Nothing! At! All! - Except of the cable car train having stopped." ¹⁷³

Acute

The acute stage of this crisis started with the smoke column rushing upwards. That was, indeed, the second one of day one, because there has been no prodromal stage as explained above.

The acute stage was finished, distinctly, on day four of the disaster. From this day, the representatives had to tell nothing new about the procedures as highlighted with the quotation of the contemporary witness Franz Lang: "[W]e delivered our final huge story on the fourth day after the disaster by saying: 'We now know that we are searching 155 people. The identification processes have already started, we need to fetch data for comparison from the USA, from Japan, from the Netherlands – therefore, these processes will take a few days.'" ¹⁷⁴

¹⁷³ Cf. Lang 2017, part 1 / 8:08 minutes.

¹⁷⁴ Lang 2017, part 2 / 11:53 minutes.

Chronic

Due to the retreat of the official statements on the relief work, journalists began to search for their stories in the environment of the deployment site very offensively, as Lang reported.¹⁷⁵ That was the reason for cancelling the entire operation on the spot, on day six.¹⁷⁶ Then, the chronic stage of the crisis started.

The corpses have been brought to Salzburg via helicopters from day 3 on where the processing by forensics started immediately at the institute of forensic medicine at the Salzburg university.¹⁷⁷ The chronic stage was over when the forensics finished their work, that means on day 7, the upcoming Friday after the disaster.¹⁷⁸

Resolution

The resolution stage began with the trial against 16 responsible stakeholders of the construction and the operation of the cable car train.¹⁷⁹ They were acquitted after 63 days of trial, that means in 2001.¹⁸⁰

In 2004, finally, a mediation commission was established that was mainly responsible for the adequate reimbursement of the victims' relatives and announced a "complete agreement" on 17th June 2008.¹⁸¹

But, in 2009, there was again convened a court hearing that had to try the reimbursement of the Japanese surviving dependants.¹⁸² With the end of these trials in 2009, the resolution stage has ended.

5.1.2 Dissecting the Hungarian red sludge disaster with the support of Fink's model

Prodromal

For the collapse of the reservoir that caused the Kolontár disaster, the prodromal stage is reported to have been huge: "Leakages were allegedly reported repeatedly

¹⁷⁵ Cf. Lang 2017, part 2; 12:21 minutes.

¹⁷⁶ Cf. Lang 2017, part 2; 13:13 minutes.

¹⁷⁷ Cf. Meyer 2003, page 2.

¹⁷⁸ Cf. Meyer 2003, page 3.

¹⁷⁹ Cf. Godeysen 2009, page 2.

¹⁸⁰ Cf. Godeysen 2009, page 2.

¹⁸¹ Cf. Godeysen 2009, page 2.

¹⁸² Cf. Godeysen 2009, page 1.

over the years, but no action was taken. [...] Inspections of the site shortly before the disaster seemingly found no problems – yet they did not include an inspection of the stability of the dams.”¹⁸³ The prodromal crisis stage has started with the first warning that has been enunciated by an inspector. As cited above, this might have been two years or even more before the disastrous event.

In the foreword to a folder in English, the Director of the Directorate General for Disaster Management of Hungary conceded that no prevention-actions were taken.

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Acute

The dam broke at 12.10 o'clock.¹⁸⁵ Subsequently, 700 thousand cubic meters of – due to its alkaline quality - caustic red sludge flooded the settlements of Kolontár, Devecser and Somlóvársáhegy.¹⁸⁶ As there had been no prodromes the afflicted had been surprised by the caustic wave, ten people died, 120 persons had to be treated in hospitals, and 390 persons had to leave their contaminated homes, immediately.¹⁸⁷ Further 110 have been evacuated in the aftermath of the first shock.¹⁸⁸ All these tasks are to account to the acute stage.

As well included are the activation of the EU Civil Protection Mechanism on 7th October 2010 at the then Monitoring and Information Center (EU MIC).¹⁸⁹

On 9th October, day 5 of the disaster, the experts warned that another part of the dam could rupture, therefore, the entire community of Kolontár was evacuated, for Devecser preparation were made, but finally the evacuation of this second community was cancelled because of an all-clear signal.¹⁹⁰ The new immediate warning phase is, consequently, not regarded as a subsequent disaster, but as an event of the acute stage that, evidently, has prolonged the aforementioned.

¹⁸³ Harms / Cohn-Bendit 2010, page 1.

¹⁸⁴ Cf. Bakond without year of publication, page 5.

¹⁸⁵ Cf. Directorate of the Mal Ltd. 2010, online access point.

¹⁸⁶ Cf. Schweitzer 2010, page 347 – 348.

¹⁸⁷ Cf. National Directorate General for Disaster Management without year of publication, page 7.

¹⁸⁸ Cf. National Directorate General for Disaster Management without year of publication, page 7.

¹⁸⁹ Cf. Member of the European Commission 2010, page 2, & National Directorate General for Disaster Management without year of publication, page 22.

¹⁹⁰ Cf. National Directorate General for Disaster Management without year of publication, page 17.

The report of one member of the European Commission after her visit of the deployment site on the evening of 19th October 2010 states, that the “emergency phase” is over with that day 15 of the disaster. ¹⁹¹

Therefore, we can assume that the acute stage was over with day 15.

Chronic

The chronic stage could especially be realized by the directly affected persons: One of their representatives reported towards the correspondent of the Austrian newspaper Der Standard, that he, his wife, and his then eleven-years-old daughter had to stand cauterizations of the second degree on more than a half of their bodies’ surface, and consequently, had to stay in the hospital for three weeks. ¹⁹² The representative, furthermore, accuses the Hungarian officers to have intercepted valuable objects like jewelry during the course of the relief works what caused not only monetary but psychological harm. ¹⁹³

The experiences of these different losses determined the chronic stage of this disaster. In addition, the wide impact of the red sludge on the environment was discovered, appreciably. The scientist Schweitzer acknowledges, that besides the courses of the Marcal river and the Rába river, the Danube was as well contaminated. ¹⁹⁴

Resolution

On the national level, a resolution phase has been administered, as the Disaster Management law of Hungary has been modified in 2011. ¹⁹⁵ But, from the affected persons’ point of view there is still no resolution of the crisis: In 2016, the responsible officials of the company, the Mal Ltd., were acquitted, and not before February 2017 a trial of appeal has been started. ¹⁹⁶ The victims don’t feel reimbursed adequately.

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¹⁹¹ Cf. Member of the European Commission 2010, page 1.

¹⁹² Cf. Mayer 2017, page 6.

¹⁹³ Cf. Mayer 2017, page 6.

¹⁹⁴ Cf. Schweitzer 2010, page 348.

¹⁹⁵ Cf. Takacs / Matczak 2013, page 26.

¹⁹⁶ Cf. Mayer 2017, page 6.

¹⁹⁷ Cf. Mayer 2017, page 6.

5.2 Designating the crucial crisis stages, reasoning of their importance

To designate the crucial crisis stages of Fink's model in reference to the fundamental rights and to determine the relevant standards of international law for each, the above insights according to Steven Fink must be linked to the results of the content analysis in chapter 4. I will do that by checking the answers to the content analyses' questions for two features: ***First, their relevance for a fundamental rights issue***, second, ***their match within the course of the disaster modeled according to Fink's four stages***.

By doing so, a framework for the election of processed contents is constituted which refers to the main research question if the **requirements of crisis communications (expressed by the modeled events)** are compatible with **fundamental rights standards (expressed by the chosen text passages)**.

5.2.1 Kolontár

Prodromal

During the prodromal phase that probably has lasted for years before the breach of the dyke, ¹⁹⁸ violations of the EU legal standards and standards of international law are said to have been committed by the authorities. The sources of European institutions suggest, that the contraventions have been caused by the private authorities of the processing company instead of the authorities of the federal administration.

The accused violations mainly refer to the declaration of the red sludge that has not been classified as hazardous, and, indeed, should have been classified as such. Consequently, the main violation is judged as a lack in information policy, the negligence of the right to freedom of information.

Acute

Hungarian officials appreciated their own relief forces and their quick response, although at least one member of the European commission admonished the lack of information during the acute response phase.

Chronic

¹⁹⁸ See: chapter 5.1.2 of this paper.

No urgent mistakes regarding the fundamental rights standards could have been discovered out of the accessible sources. One glance to the newspaper *Der Standard* but implicates the impression that the afflicted have considered their treatment to be unjust.

Resolution

The same holds for the resolution stage during which the trial against responsible managers of the Mal Ltd. has ended with acquittals.

In February 2017, the acquittals have been repealed and a new trial has been opened.¹⁹⁹

Consequently, the fundamental right that might have been affected during the chronic and the resolution stage of the red sludge disaster has been the right to an effective remedy.²⁰⁰ But, I don't have the expertise on my disposal necessary to estimate if the accusations of the victims are justified or not. Additionally, this is of no importance for the present issue on ***crisis communications*** and, therefore, shall not be discussed here.

5.2.2 Kaprun

Prodromal

The exploration of the course of the events of the cable car disaster has resulted in the insight that the prodromal stage did not exist at all.²⁰¹

Acute

During the acute stage which started with the realization of the fire's outbreak by the immediate environment and ended with day 4 of the disaster when the main on-site investigations were finished,²⁰² there has been an obvious violation of international law standards: The publication of personal data without their distinct agreement.²⁰³ It was a violation of the European General Data Protection Regulation, namely the recital 19 of the new regulation which will be put into force on 25th March 2018. This recital states that the exception that is made with article 2 paragraph 2 of the same

¹⁹⁹ Cf. Mayer 2017, page 6.

²⁰⁰ Cf. United Nations, General Assembly 1948, Article 8 & United Nations, General Assembly 1985, Article 14, par. 1, page 137.

²⁰¹ See: chapter 5.1.1 of the present paper.

²⁰² Cf. Lang 2017, part 2/ 11:53 minutes.

²⁰³ Cf. Lang 2017, part 2/ 01:05 minutes & part 2 /01:30 minutes.

regulation in reference to the processing of personal data by competent authorities mandatory to protect public security ²⁰⁴ is not legally valid for cases where ***the processing in the intended way is not necessary***. ²⁰⁵ To put it straight, officials during a crisis have the principal obligation to protect personal data if the repeal of this obligation is not absolutely necessary to maintain public security. ***On EU level, the principle of proportionality*** regulates such decisions.

In chapter 2.4 of the present paper the definition of this subject is supplemented by the original legal sentence on the right to protection of personal data, the article 12 of the Universal Declaration of Human Rights. ²⁰⁶

But, I argue the definition of the Universal Declaration of Human Rights is not strong enough to apply to the Kaprun case, as it only *protects everyone from the arbitrary interference with his private decisions, actions and social relationships*. During the crisis following the cable car disaster, no one with good consciousness can reproach the officials with arbitrariness, as they acted within this situation due to their mandate to solve the same.

Chronic

It must be noted that two interventions ²⁰⁷ of journalists during the chronic phase of the disaster have been relevant for fundamental rights issues. They showed up the area of tension between the right to freedom of information and the related freedom of the media, on the one hand, and everyone's fundamental right to life, on the other hand, respectively, the area of tension between the right to freedom of information and the related freedom of the media, on the one hand, and the right to privacy and family life, on the other hand.

The talk with Franz Lang points to both areas, nevertheless, this issue was not listed in the table of chapter 4.3, as the fellows of Lang prevented any violation before it appeared to fall under the scope of European legal standards or the scope of international law.

²⁰⁴ Cf. European Parliament & Council of the European Union 2016, page 109, Art. 2, par. 2.

²⁰⁵ Cf. European Parliament & Council of the European Union 2016, page 11, recital 19.

²⁰⁶ See: United Nations, General Assembly 1948, Article 12: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

²⁰⁷ For assertions on the amount of these incidents see Lang 2017, part 2, 19:00 minutes.

Regarding the two reporters who had been taken into safekeeping after their intervention, Lang pointed to the danger of their penetration of the tunnel for their own lives.²⁰⁸ Lang said, that the Austrian “Föhnsturm”²⁰⁹ was too hazardous for layers of disaster relief like journalists usually are.²¹⁰

Additionally, Lang highlighted his responsibility to warrant periods of privacy for the relief forces, because after their shift the fellows came “downwards completely exhausted”.²¹¹ Therefore, they would have been protected from the public scrutiny via the media, further the impression that the relief forces would take their life easy and would might shortly grin after one shift should not have been transmitted to the surviving dependants of the disaster.²¹²

Resolution

Similar to the Kolontár case, the resolution stage is marked by accusations and trials. Furthermore, the feeling of the victims’ relatives to have been treated unjustly is viral to the resolution stage of the cable car disaster as well as to the red sludge disaster.

Again, it shall not be estimated herewith, if the accusations of officials are justified or not. The only judgement by this paper is made on the applicability of fundamental rights to crisis communications, and this issue is not affected by the cited accusations. If the right to an effective remedy²¹³ is met, is not the topic of the present paper.

5.2.3 The crucial stages in reference to fundamental crisis communications rights

According to the both analyzed disasters, the prodromal and the acute stage of Steven Fink’s model are especially sensitive to fundamental rights in relation to crisis communications procedures.

²⁰⁸ Cf. Lang 2017, part 2 / 19:00 minutes.

²⁰⁹ = typical storm of the Alps. This characteristic expression cannot be translated into English.

²¹⁰ Cf. Lang 2017, part 1 / 13:28 minutes.

²¹¹ Lang 2017, part 1 / 22:05 minutes.

²¹² Cf. Lang 2017, part 1/ 22:58 minutes.

²¹³ Cf. United Nations, General Assembly 1948, Article 8 & United Nations, General Assembly 1985, Article 14, par. 1, page 137.

Hereby, I must emphasize that the upcoming result is not representative at all. It is rather a **suggestion how the link between fundamental rights and crisis communications tasks could be evaluated**. But, the size and the means of this master's thesis are by far not sufficient to provide representative results on such a complex issue. Nevertheless, I will try to give an explanation on the emergence of these results with the following section.

Peter M. Sandman defines a crisis as follows: **crisis = high hazard + high outrage**.

²¹⁴ Sandman alters his model according to the degree of hazard (low / high) and the degree of outrage (low / high). For high outrage-situations the professor for communications studies predicts "early over-reactions" as one of people's main ways of absorbing new risks. ²¹⁵ If this "adjustment reaction" ²¹⁶— as it is named by psychiatrists — is handled correctly by the representatives of responsible authorities, "[p]eople will settle soon enough into the New Normal." ²¹⁷

The explanation makes obvious, that the entry into this New Normal will take place within a not nearer defined space of time. Measured with the speed of time during a crisis that is likely to mark the over-reaction (and vice versa: the reaction to the increased speed of time is overwhelming), the prodromal and the acute stages are the most sensitive according to Fink's model ²¹⁸, as their main characteristic is the increased speed of time and up-coming events. The chronic and the resolution stages already verbatim express that the crisis meanwhile has grown into a habit, and therefore, over-reactions probably fail to appear. ²¹⁹

Therefore, the conclusion from the experiences during the presented disasters regarding the sensitiveness of crisis communications to fundamental rights issues fit

²¹⁴ Cf. Sandman 2004, page 1.

²¹⁵ Cf. Lanard / Sandman 2004 a, page 4.

²¹⁶ Lanard / Sandman 2004 a, page 4.

²¹⁷ Lanard / Sandman 2004 a, page 4.

²¹⁸ The assertion on the high speed of time during the prodromal and the acute stage is made on the basis of Steven Fink's quotations as follows: Prodromal stage: „[O]ur task is to sharpen our antennae to be able to spot the prodromes before, not after, the acute crisis occurs.“ = Fink 1986/2002, page 21. Acute stage: "One of the major difficulties in managing a crisis during the acute phase [...] is the avalanchelike speed and intensity that often accompany and characterize this stage." = Fink 1986/2002, page 23.

²¹⁹ Conclusion out of Steven Fink's description of the chronic and the resolution stage, as he states for the chronic phase: „This is also a period of recovery, of self-analysis, of self-doubt, and of healing.“ = Fink 1986/2002, page 24.

with the models of both, Peter M. Sandman's measurement of outrage and Steven Fink's order of the crisis.

The **prodromal stage shows mainly a lack of freedom of information** (regarding Kolontár only, as there is no prodromal stage during the course of events in Kaprun), whereas the **acute stage seems to be likely to lack both, the freedom of information on the one hand, and the right to protection of personal data on the other hand** (regarding Kaprun, the right to protection of personal data was violated, during the acute phase of Kolontár disaster information was hidden again).

6 Discussing areas of tension between fundamental rights and crisis communications with regard to experiences from Kaprun and Kolontár

As this paper focusses on two nations, simultaneously, it is mainly concerned with standards of *international law* which are applicable to both cases. To investigate the areas of tension between the fundamental rights that are established by the international law, and crisis communications, it is worth noting how the international law influences the national law.

As a result of the investigations in chapter 5, the prodromal and the acute stage of a crisis have been explored as especially sensitive to fundamental rights issues.

Therefore, they both are focused subsequent to the discussion of the applicability of fundamental legal standards to crisis communications.

6.1 Discussing the applicability of fundamental legal standards to crisis situations

6.1.1 The fundamental rights requirements of the European Union

The implementation of fundamental rights to a public process requires legal standards to be applied. Therefore, to consider the legal influence on crisis communications, it is first necessary to highlight the overall structure which encompasses the course of events seen from the legal perspective: Basically, one needs to distinguish the private law, the public law and criminal approach. The present work only considers the private and public law aspects. Therefore, the criminal law accusations of both cases (negligences of the management of the Mal Ltd., opportunistic behavior of the constructors and the operators of the cable car) are not discussed. The focus on private and public law issues, evidently, specifies the questions to a narrower framework.

On EU level, for example, there are two special decision-making rules established with the Treaty of Lisbon: the ‘emergency brake’ and the ‘pseudo-veto’ ²²⁰ which can but only be applied in criminal law cases. ²²¹

²²⁰ Peers 2011, page 64.

²²¹ Peers 2011, page 65.

Although, at the first glance, the European legal standards seem to restrict emergency law to criminal law by the tools of “emergency brake” and “pseudo-veto”, there exists the duty for EU member states to contribute to the mitigation of disasters in an informal manner. As especially in the European Union’s law, obligations for positive governmental actions are adjudicated – these are called **positive obligations**. As mentioned in chapter 2.3, the Austrian legal expert Walter Berka substantiates these *positive obligations* as mainly deduced from the right to life ²²², the right to the protection of personal data - referring to article 8 European Convention on the Protection of Human Rights and Fundamental Freedoms, specified with the EU General Regulation on the Protection of Personal Data - and the right to personal property ²²³ of the First Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms. ²²⁴

Berka herewith, names almost all the rights that are analyzed with the issue of the present paper, only the right to freedom of information is missing. These positive obligations have been defined with one standard work of the beginning 20. century: System of the subjective public rights (German original: System der subjektiven öffentlichen Rechte) by Georg Jellinek. ²²⁵ Jellinek explains the state like a vital being that is enabled to acknowledge the free will of free human beings as its basic constitution. ²²⁶ As the individual human being has capabilities on her disposal which are useful to the state’s function, the human is allowed to address legal claims to the state. ²²⁷ These legal claims today are called **positive obligations. These are the legal standards the state warrants by its presence, while rather their guarantee itself is crucial than the manner of their fulfilment.**

These positive obligations - to the greater part set by international law – are adopted to the national law in Austria ²²⁸, whereas in Hungary the legal norms of international

²²² Council of Europe 1950/2002, Article 2, page 6.

²²³ Cf. Council of Europe 1952/2002, Article 1, page 31.

²²⁴ Cf. Berka 2013, page 61.

²²⁵ Cf. Jellinek 1905.

²²⁶ Cf. Jellinek 1905, page 85, 86.

²²⁷ Cf. Jellinek 1905, page 86.

²²⁸ There are two ways of implementing international law to the national law: adoption and transformation. = Beham / Fink / Janik 2015, page 28. Austria applies the adoption of international law, that means, the legal standards of international law are regarded as legal norms for national law, simultaneously. = Beham / Fink / Janik 2015, page 165.

law to which the government is committed are partly mutated.²²⁹ The adoption of international law to national law is systematically called monism. Monism stands for the legal view that the national law and the international law are parts of one encompassing system, and, therefore, the international law must not be implemented actively into the national law to establish its full impact. Instead, it is assumed to become the primary legal source automatically.²³⁰ The monistic view runs the risk to let the international law decay to dead law of the nation state. To the contrary, Hungary's way of implementing the international law like it was a foreign one by setting appropriate legal standards on the national level, is called dualism.²³¹

The substance of **positive obligations** as – in the sense of Jellinek – **rights which are warranted by the state with its presence, makes them lack clear instructions to the manner of their fulfilment.** The lack of clear instructions again can lead to misinterpretations, especially in crisis situations.

6.1.2 The fundamental rights requirements of the UN International Covenant on Civil and Political Rights

The legal standards of the United Nations – if though they belong to the positive obligations - are, of course, adopted in the same monistic manner in Austria²³² and in a faded manner in Hungary.²³³ Among them, the most useful for the present issues are the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976) and the International Covenant on Economic, Social and Cultural Rights (1976). On the contrary to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights **are binding contracts of international law.**²³⁴ The International Covenant on Civil and

²²⁹ United Nations, Human Rights Council 2011, Article 78, page 12.

²³⁰ Cf. Beham / Fink / Janik 2015, page 28.

²³¹ Cf. Beham / Fink / Janik 2015, page 28.

²³² Cf. Beham / Fink / Janik 2015, page 28.

²³³ For the conclusion of a washed out implementation of international law in Hungary see the recommendations of diplomats on occasion the first evaluation's of Hungary by the working group of the Human Rights Council for the Universal Periodic Review, cf. United Nations, Human Rights Council 2011.

²³⁴ Cf. Beham / Fink / Janik 2015, page 317.

Political Rights contains to the greater part the assertions of the Universal Declaration of Human Rights but describes it more precisely. Therefore, I'm employing the Covenant here instead of the Declaration.

The International Covenant on Civil and Political Rights encompasses many concrete assertions regarding crisis management. It was adopted by the General Assembly of the United Nations in 1966, it was put into force in 1976, and by 1985 was ratified by altogether 79 nations, among them Austria and Hungary.²³⁵ The parties to the Covenant state, that “[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the **States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law** and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”²³⁶

Accordingly, the Covenant's member states are allowed to derogate from a few rights which are set into force by the Covenant, but, simultaneously, the General Assembly of the United Nations highlights a few rights which are considered such fundamental, that they aren't even allowed to be abolished during the most serious crisis.²³⁷

Among them are the right to life (article 6 of the Covenant²³⁸) and the right to freedom of thought, conscience and religion (article 18 of the Covenant²³⁹). It is noteworthy, that the immediately following article, article 19, establishes the right to freedom of information, and that, as it wasn't mentioned in article 4 as an exception, the state parties to the Covenant on Civil and Political Rights, consider the right to information not as anyhow worth protecting during a disaster or crisis (“case of emergency”).

²³⁵ Cf. United Nations, General Assembly, 1966/1976/1985, page 132.

²³⁶ United Nations, General Assembly 1966/1976/1985, Art. 4, par. 1, page 134.

²³⁷ Cf. United Nations, General Assembly 1966/1976/1985, Art. 4, par. 2, page 134.

²³⁸ Cf. United Nations, General Assembly 1966/1976/1985, pages 134 – 135.

²³⁹ Cf. United Nations, General Assembly 1966/1976/1985, page 139.

Even on the contrary: The right to freedom of information is cited almost literally according to the Universal Declaration of Human Rights.²⁴⁰ Simultaneous to the literal quotation, there have parts been added to the original text from 1948. While in the Universal Declaration of Human Rights, the article 19 is not sorted into sections, in the International Covenant on Civil and Political Rights it encompasses three paragraphs. The third of these, **significantly excludes the right to freedom of information from the set of rights that apply even in case of emergency** by saying: ***“The exercise of the rights provided for in paragraph 2 [the right to seek, receive and impart information; annotation] of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals.”***²⁴¹

Consequently, the right to freedom of information does not belong to those rights that are still enforceable during a crisis. This is explained by the use of information by authorities to maintain the national security or the public health and morals – features that easily can be transferred to crisis communications.

6.1.3 Discussing the insights to fundamental rights documents in reference to crisis situations

To summarize the above discussion, out of the four rights that have been employed to process the present issue, there remain now three: the right to life, the right to the protection of personal data, and the right to property. The right to freedom of information must be excluded from the set of fundamental crisis communications rights, according to the given of the United Nation’s general assembly.

²⁴⁰ See: Universal Declaration of Human Rights: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”, Art. 19, United Nations, General Assembly 1948. International Covenant on Civil and Political Rights: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any.”, Art. 19, par. 1 & 2, pages 139 – 140, United Nations, General Assembly 1966/1976/1985.

²⁴¹ United Nations, General Assembly 1966/1976/1985, Art. 19, par. 3, page 140.

Nevertheless, there is evidence, that the protection of the fundamental right to freedom of information helps protecting lives: The lecturer on law at the Free University of Berlin Andreas von Arnould illustrates that fact with the Tsunami disaster of December 2004 in the Indian Ocean which hit the inhabitants of Indonesia, Thailand, Malaysia, India, Sri Lanka and Somalia ²⁴² heavily. ²⁴³ Von Arnould argues, if the warning had been delivered systematically and the information had been submitted immediately, “hätte auf diese Weise eine nicht unbeträchtliche Zahl von Menschenleben gerettet werden können.” ²⁴⁴

Additionally, Klaas Eller states in his essay on fundamental rights during disasters, that prodromes regarding imminent hazards must urgently be announced to enable the citizens to estimate the acute situation of danger, and furthermore, to put them in the position to set protective measures for themselves. ²⁴⁵ Consequently and most importantly, Eller concludes: „Beides erhöht die Anforderungen an staatliche Schutzmaßnahmen.“ ²⁴⁶ Herewith, for the first time during this discussion the **principal of proportionality** is at issue: If the information voluntarily delivered to citizens is low, the requirements of the civil society towards the government are likely to grow to an infeasible extent. Consequently, the government will provide sufficient information in its own interest. That is what the principal of proportionality means in its concrete application, in general it means that a pressing social need must be proved to cause an action. ²⁴⁷

Von Arnould reiterates this position as the most convincing approach ²⁴⁸ and, readily, names it “**Menschenrechtliche Informationspflichten**”. ²⁴⁹

Subsequently, von Arnould discusses multi-lateral contracts that shall guarantee the right to information in international law. These are: the tsunami alarm system of the pacific states, the cooperation-group of the European Council which was established in 1987 to cope with the aftermath of disasters, and the Tampere Convention which

²⁴² Cf. Lüdemann / Gerhard 2014, online access point.

²⁴³ Cf. Arnould 2005, pages 279 -280.

²⁴⁴ Arnould 205, page 280.

²⁴⁵ Cf. Eller 2008 & 2009, page 35.

²⁴⁶ Eller 2008 & 2009, page 35.

²⁴⁷ Cf. Grabenwarter 2009, page 116.

²⁴⁸ Cf. Arnould 2005, page 295.

²⁴⁹ Arnould 2005, page 294.

entered into force in 2005 and is supposed to be a directive of the technical equipment for communicational processes rather than for the processes themselves.

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These multi-lateral contracts fail to state a clear regulation or directive that would be binding (*lex lata*) in International law, instead they correspond to decisions or recommendations, and, therefore, miss the binding character,²⁵¹ they are called soft law.²⁵²

His assertions are reinforced by arguments that belong to the branch of communications science: In the recent decade, research on organizational crisis communications, mainly conducted in the USA, has proved, that “when organizations disclose incriminating information before a third party does so, journalists find their public relations practitioners more credible.”²⁵³ Additionally, theorists of this discipline illustrate, that organizations which share detrimental information with the public, keep the authority over information flows, and are, consequently, less in danger to suffer organizational damage.²⁵⁴ That means, the organization – no matter whether it is a governmental or a private one – builds up a relationship of trust with the audience, if it communicates the crisis’ circumstances honestly. It has also been proved scientifically, that trust is the most important variable to prompt the afflicted persons to follow evacuation instructions.²⁵⁵

Furthermore, the right to freedom of information belongs – like the right to life, the right to the protection of personal data, and the right to property do – to the so-called **defence law, Abwehrrechte in German**,²⁵⁶ that means that the review procedure, respectively the expectation of its fulfilment equals with the other rights of concern. The review of defence law is structured in three sections:²⁵⁷

- (a) Determining the area of protection
- (b) Determining the manner of interference
- (c) Justification of the interference

²⁵⁰ Arnould 2005, page 288.

²⁵¹ Cf. Arnould 2005, page 288.

²⁵² Cf. Beham / Fink / Janik 2015, page 41.

²⁵³ De Vocht et alii 2016, page 319.

²⁵⁴ Cf. De Vocht et alii 2016, page 319, & Claeys 2017, page 306.

²⁵⁵ Cf. De Vocht et alii 2016, page 326.

²⁵⁶ Cf. Grabenwarter 2009, page 110.

²⁵⁷ Cf. Grabenwarter 2009, page 110.

The entire defence law of the European Convention for the Protection of Human Rights and Fundamental Freedoms needs **a legal basis** for **justifying an interference**.²⁵⁸ Besides the proof of the existing legal basis, further possible arguments of justification are the **legitimate objectives** which triggered the interference²⁵⁹, and the **principal of proportionality**.²⁶⁰

To sum it up, the right to freedom of information cannot be required by law in case of a crisis. The right to life, the right to protection of personal data, and the right to property remain enforceable. Nevertheless, the right to freedom of information falls under the scope of a special area of protection wherein concise reasoning of the interference is required and which it has in common with all other rights of concern.

6.2 Conclusions of the evaluation of the deployments in Kolontár and Kaprun

As the prodromal and the acute stage of a crisis were designated as sensitive with chapter 5.2.3, and the right to freedom of information was acknowledged the most crucial that even applies to both stages, we must now revise this diagnosis. The new insight of chapter 6.1 points to the fact, that the right to freedom of information loses its validity in case of a crisis.

As a substrate of the results in chapters 5 and 6, the right to protection of personal data appears to be the most valid in reference to the empirical examples of the red sludge disaster and the cable car disaster. By deepening the reading of the legal credentialing of these rights, their impact to the crisis will be estimated, finally.

6.2.1 Right to life

The right to life is part of the government's **positive obligations**.²⁶¹ With article 2, paragraph 1 the Convention on the Protection of Human Rights and Fundamental Freedoms affirms the protection of the right to life from interferences by the state, on the one hand, and from threat through private persons, on the other.²⁶² But, as

²⁵⁸ Cf. Grabenwarter 2009, page 112.

²⁵⁹ Cf. Grabenwarter 2009, pages 114 – 115.

²⁶⁰ Cf. Grabenwarter 2009, pages 115 – 121.

²⁶¹ Cf. Grabenwarter 2009, page 139.

²⁶² Cf. Grabenwarter 2009, page 139.

Christoph Grabenwarter, judge at the Austrian Constitutional Court, states, these guarantees are subjected to the freedom of the legal arrangement by every single government which commits itself to the convention. Nevertheless, the freedom of the legal arrangements is limited by the **principle of effectiveness** and the **principle of proportionality**.²⁶³

Grabenwarter highlights, that ***the protection of the right to life not only means obligations, but, additionally, it means the fulfilment of this obligation by the effective enforcement of the law that protects life.***²⁶⁴

This becomes obvious with two important studies that have been conducted on the correlation of corruption and earth quake casualties. The first one was conducted by US-American economists adding knowledge to the argumentative branch of social losses which are caused by public sector corruption. The three authors maintained that the degree of corruption as well influences the mortality rate when a major earthquake occurs.²⁶⁵ Having employed data of 344 earthquakes the authors, finally confirmed “a strong, statistically significant, positive relationship between public sector corruption and the toll in terms of deaths that major earthquakes cause.”²⁶⁶ A study conducted by the World Bank in co-operation with British researchers augments on the results of Escaleras et alii.²⁶⁷ The authors of the World Bank study affirm that well institutionalized governments are prepared to avoid “potentially large market failures”²⁶⁸ of which one is named “imperfect information”²⁶⁹ on the environmental conditions. Keefer et alii, finally, proved empirically that “the presence of political market imperfections”²⁷⁰ like the absence of free elections and the incredibility of politicians leads to a minimum reaction of the affected nations’ governments to their high earthquake propensity.²⁷¹

²⁶³ Cf. Grabenwarter 2009, page 139.

²⁶⁴ Cf. Grabenwarter 2009, page 140.

²⁶⁵ Cf. Escaleras / Anbarci / Register 2007, page 209.

²⁶⁶ Escaleras / Anbarci / Register 2007, page 226.

²⁶⁷ Cf. Keefer / Neumayer / Plümper 2011, page 1530.

²⁶⁸ Keefer / Neumayer / Plümper 2011, page 1531.

²⁶⁹ Keefer / Neumayer / Plümper 2011, page 1531.

²⁷⁰ Keefer / Neumayer / Plümper 2011, page 1539.

²⁷¹ Cf. Keefer / Neumayer / Plümper 2011, page 1539.

To sum it up: The willingness of governments to render a safe and free life to their citizens has a positive effect on their ability to cope with a crisis by reducing the toll of lives it takes. This willingness again is enforced by democratic constitutions. Governments that commit to democratic constitutions will set the legal frameworks Grabenwarter calls in as the ***effective enforcement of the law***.²⁷²

Empirical evidence has shown that the right to life is not immediately at issue but it builds the end to the means of administrative actions. The right to life belongs to the absolute rights, in contrast to the relative rights.²⁷³ Consequently, it cannot be derogated.

6.2.2 *Right to the protection of personal data*

According to the Austrian judge Christoph Grabenwarter, it is part of the negative obligations to which the positive obligations are might added.²⁷⁴ Whereas, the Austrian legal expert Walter Berka is convinced that the right to privacy and the protection of personal data is entirely the basis for positive obligations of the state.²⁷⁵ The European Convention on the Protection of Human Rights and Fundamental Freedoms attests Berka's position with its article 8, paragraph 2 that excludes distinctly the interference of public authorities for the sake of public safety, economic well-being, and other features of a democratic society.²⁷⁶ Accordingly, the government is commissioned to protect the privacy of its citizens from interference from thirds while it is itself allowed to intervene into private life under specific circumstances.

Further evidence for this view is delivered by the European General Data Protection Regulation.²⁷⁷ With its article 6, the Regulation draft – the Regulation itself will enter into force on 25th March 2018 – names all circumstances under which the processing of personal data is lawful. The definition includes, expressively, the necessary activities “in order to protect the vital interests of the data subject or of another

²⁷² Cf. Grabenwarter 2009, page 140.

²⁷³ Cf. Beham / Fink / Janik 2015, page 315.

²⁷⁴ Cf. Grabenwarter 2009, page 197.

²⁷⁵ Cf. Berka 2013, page 61.

²⁷⁶ Cf. Council of Europe 1950/2002, Article 8, page 10.

²⁷⁷ Cf. European Parliament & Council of the European Union 2016.

natural person”²⁷⁸ and “the processing [...] necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.²⁷⁹

This position is affirmed by the section 5 of the same Regulation, entitled “Restrictions”. Restrictions, the appertaining article 23 reads, should be allowed for achieving certain higher aims “when such a restriction respects the essence of the fundamental rights and freedoms”.²⁸⁰ Among these higher aims are, at the first place, “national security”,²⁸¹ “public security”²⁸² at the third place, and, at the last but one place, “the protection of the data subject or the rights and freedoms of others”.

²⁸³

Consequently, the case of emergency imposes constraints on the right to the protection of personal data. It must not be guaranteed in crisis settings.

With the General Data Protection Regulation of the European Union a new age of data processing starts as it is the first document on the protection of personal data that, explicitly, addresses governmental authorities in the same way as it addresses private institutions. This becomes obvious with the definitions accompanying the Data Protection Regulation which include, distinctly, stakeholders of the entire public, exemplum gratia: “‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data”.²⁸⁴

Empirical evidence has resulted in the insight, that the right to the protection of personal data is – besides the right to freedom of information - the most sensitive during the acute stage of a crisis.

6.2.3 Right to property

The International Covenant on Economic, Social and Cultural Rights of the United Nations which was adopted by the General Assembly in 1966 and put into force in

²⁷⁸ European Parliament & Council of the European Union 2016, Art. 6, par. 1, subparagraph d, page 119.

²⁷⁹ European Parliament & Council of the European Union 2016, Art. 6, par. 1, subparagraph e, page 119.

²⁸⁰ European Parliament & Council of the European Union 2016, Art. 23, par. 1, page 147.

²⁸¹ European Parliament & Council of the European Union 2016, Art. 23, par. 1, subparagraph a, page 147.

²⁸² European Parliament & Council of the European Union 2016, Art. 23, par. 1, subparagraph c, page 148.

²⁸³ European Parliament & Council of the European Union 2016, Art. 23, par. 1, subparagraph i, page 148.

²⁸⁴ European Parliament & Council of the European Union 2016, Art. 4, par. 7, page 112.

1976 has been ratified by Hungary,²⁸⁵ and by Austria.²⁸⁶ It obligates the state parties not only to acknowledge the right to personal property like clothing and housing, but to establish the adequate conditions to enable everyone to acquire food, clothing and housing: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”²⁸⁷

Evidently, both legal experts who are consulted herewith confirm the positive obligation resulting from the right to property.²⁸⁸ But simultaneously, the justification of an interference into the right to property can be valid within an ample scope.²⁸⁹ In case of **public interest** in the property, the proportionality to the individual fundamental right to property is given. According to the defence law character of the right to property,²⁹⁰ the reason for the interference in fulfilment of the public interest is then proved, sufficiently.

Empirical evidence has delivered no clear hints to the fundamental right to property. This is probably due to the fact, that the right to property – similarly to the right to life – is an end, not the means. The right to property illustrates the area of tension between individual fundamental right and public interest very well.

6.3 Relating the discussed issues to the contents of the university course Risk Prevention and Disaster Management

With the above sub-chapters, it has become obvious that the fundamental rights are subjects to restrictions by – and with the exception of data protection regulations²⁹¹ only by – competent governmental authorities in the case of a crisis. Nevertheless,

²⁸⁵ Cf. United Nations, General Assembly, 1966/1976/1983, page 4.

²⁸⁶ Cf. United Nations, Human Rights Office of the High Commissioner 2017, one map.

²⁸⁷ United Nations, General Assembly, 1966/1976/1983, Art. 11, par. 1, page 7.

²⁸⁸ Cf. Berka 2013, page 61 & Grabenwarter 2009, page 441.

²⁸⁹ Cf. Grabenwarter 2009, page 434.

²⁹⁰ Cf. Grabenwarter 2009, page 110.

²⁹¹ See the definition of ‘controller’ in the EU General Data Protection Regulation, European Parliament & Council of the European Union 2016, Art. 4, par. 7, page 112.

the crisis cannot decay to a space free of rights. But, how is the attention to the fundamental rights thus warranted during crises?

The answer has been given by the research projects of Peter M. Sandman, and by the assertions of Franz Lang in the attached interview: Compassion, empathy and sensitivity are the key guarantors of the compliance with fundamental rights.

That is why the fundamental crisis communication right to freedom of information cannot be called in by the legislative, it can only be exercised by the accordingly competent officials. This requires awareness of the special needs of by a crisis affected persons, and in addition the awareness of the loose legal framework we have approached above. The university course Risk Prevention and Disaster Management has set the framework of the knowledge transfer: The complexity of the applicable norms has been discussed as well as the responsibility of certain stakeholders. A few times, additionally, it has been stated that the commitment to the fundamental rights, with special emphasis on the right to life, the prohibition of penal servitude, the right to the protection of personal data, and on the right to property, shall be the leading principle of disaster relief works.²⁹²

6.3.1 Framework of decision making during a crisis

Especially in Austria, where the disaster and crisis law is a cross-sectional subject²⁹³, the protection of fundamental rights requires basic knowledge on the allocation of the competences within the nation. Due to the limited scope of time and retentiveness of the students, this knowledge has been imparted to the students with the focus on Austria. In this regard, it is noteworthy that the fact of disaster relief works is a cross-sectional subject in national law is reported for Australia as well, while the reporting authors state that this is the same for “many other countries”.²⁹⁴

The cross-sectional character appears as the sharing of responsibilities between the mandated stakeholders that belong to different levels of the public administration. The allocation of competences between the Austrian body politics distributes the responsibility for the prevention of natural disaster to the federation, while the responsibility for the disaster response is distributed to the counties.²⁹⁵ With the study course Risk Prevention and Disaster Management we have been informed

²⁹² Cf. Schindler 2016, slide 88.

²⁹³ Cf. Rudolf-Miklau 2009, page 59.

²⁹⁴ Howard et alii 2017, page 139.

²⁹⁵ Cf. Rudolf-Miklau 2009, page 60.

about the different levels on which a risk or a crisis has to be managed. Altogether, there are four levels in the public administration: ²⁹⁶

- Normative
- Strategic
- Tactic
- Operational

Legal standards are set at the normative level. With the courses of the study program Risk Prevention and Disaster Management, the students have been prepared for distinguishing the levels according to their tasks. The disaster offices first-rate are the county's authorities, concretely: The county's government, the district administration's office, and the major. ²⁹⁷

The office of the Federal Chancellor, and the Federal Ministry of Internal Affairs are only responsible in case of a supra-regional disaster. ²⁹⁸ Besides the principal of proportionality, ²⁹⁹ these responsible authorities commit themselves to the principles of conduct, *Gebarungsgrundsätze* in German, which are the following: ³⁰⁰

- (a) Legality
- (b) Correctness
- (c) Thrift
- (d) Economic efficiency
- (e) Convenience

The principles of conduct indicate the obligation to protect to which the government is committed. Legally, this obligation can be explored on international level in the right to life, the prohibition of penal servitude, the right to privacy and family life (respectively, protection of personal data) and right to property. ³⁰¹ In reference to the research question of the present paper, the right to freedom of information is again excluded from a list of significant character for the definition of fundamental disaster rights.

²⁹⁶ Rudolf-Miklau 2016, slide 22.

²⁹⁷ Cf. Schindler 2016, slide 101.

²⁹⁸ Cf. Schindler 2016, slide 102.

²⁹⁹ Cf. Schindler 2016, slide 28.

³⁰⁰ Cf. Schindler 2016, slide 30.

³⁰¹ Cf. Schindler 2016, slide 88.

The legal standards set on the international level by institutions of the European Union, are, according to the Austrian professor on law Peter Bussjäger, ³⁰² guided by the **principle of solidarity** ³⁰³, article 222, and the incitement for co-operation of the Member States with article 196 of the Treaty on the Functioning of the European Union. ³⁰⁴

6.3.2 Responsible stakeholders in Austria

According to the Austrian conception of legality, the directors of the district administration (on the regional level) or the county's governor (on the supra-regional level) have to overtake the responsibility for the disaster management ³⁰⁵, the district administration, therefore, commands the magisterial deployment in eight Austrian counties, only in Vorarlberg the major has the magisterial command. ³⁰⁶ This network of administrative stakeholders has been discussed, primarily, within the lecture of Peter Bussjäger, Thomas Schindler and Teichmann, entitled "*Rechtliche und organisatorische Aspekte der Katastrophenbewältigung und Wiederherstellung*". The lecturers recommended the work of Claudia Fuchs on **disaster relief** which was published as the homonymous essay (German original: Katastrophenhilfe) in the anthology **The Law of the Counties** (German original: Das Recht der Länder). ³⁰⁷ The most organizational aspects of the administrative disaster management are cited, herewith, according to Claudia Fuchs. According to Fuchs, the major of the affected community commands the deployment on the local level. ³⁰⁸ Consequently, the affected community and the county administration are obligated to offer all their material for disaster relief works and their institutional body. ³⁰⁹ The community major, therefore, becomes the high commander of the deployment, and the

³⁰² Cf. Bussjäger 2016, slide 5.

³⁰³ Cf. European Union 2012, Art. 222, page 148.

³⁰⁴ Cf. European Union 2012, Art. 196, pages 135 – 136.

³⁰⁵ Cf. Bussjäger 2016, slide 15 & Fuchs 2012, page 252.

³⁰⁶ Cf. Fuchs 2012, page 251.

³⁰⁷ Cf. Fuchs 2012.

³⁰⁸ Cf. Fuchs 2012, page 251.

³⁰⁹ Cf. Fuchs 2012, page 252.

community itself becomes the legal entity of the disaster relief works. ³¹⁰ This is the immediate **tactical level**.

Simultaneously, the director of the district administration is responsible for the announcement of the disaster. ³¹¹ If the director of the district administration announces the disaster, the county and the affected community have to offer their entire resources. At first, the community is especially challenged to offer material support like the resources of the local fire department, in a second step, the county will deliver financial support. ³¹²

Bussjäger points out, that the tasks of the governor and the major are not easy to fulfil: It often requires specific knowledge, for example on energy plants or on epidemics. The disaster laws of the counties try to meet this requirements with directives for the organization of the administrative relief forces' structure: On the county's level, the precautionary center, Landeswarnzentrale in German, is responsible for gathering information, on the community's, the district's, and the county's level the establishment of so-called coordinating advisory boards, Koordinationsausschüsse in German, is possible. ³¹³ These are the requirements of the **strategic level**.

On the **operational level**, the executive actions are set by the members of the local fire departments, the rescue parties, corresponding private organizations, the army, and the police. ³¹⁴

A further important stakeholder of the operational level was discussed within an own lecture: the **crisis intervention team**.

The psychological support which is delivered by the crisis intervention teams has been discussed with Barbara Juen and Cornel Binder-Krieglstein in their lecture "Medizinische und psychosoziale Aspekte der Katastrophenhilfe". Herein, the most distinctly emphasized aspect of the work of crisis intervention teams has been that the emotions of affected persons should not be reassured overwhelmingly, instead there shall be provided space for their emergence. With the upcoming chapter 7, this view will be supported by scientific evidence.

³¹⁰ Cf. Bussjäger 2016, slide 16.

³¹¹ Cf. Fuchs 2012, page 252.

³¹² Cf. Fuchs 2012, page 254.

³¹³ Cf. Fuchs 2012, page 253.

³¹⁴ Cf. Schindler 2016, slide 110.

Furthermore, the four levels of psychosocial support have been introduced by Barbara Juen. These are: ³¹⁵

- (a) The protecting environment that renders the fulfilment of the basic needs possible what is needed by every member of the crisis setting.
- (b) The support by a trustful community or by the family. – This is needed by a few affected people.
- (c) Psychosocial support within focus groups which need only less persons.
- (d) Psychological / psychiatric treatment. – Very less persons do require it.

Besides, Juen introduced the psychological shelter which is one tool of the basic needs fulfilment. Features of this shelter are: ³¹⁶

- (a) giving information
- (b) everyday life routines
- (c) rituals
- (d) affirmation of social networks
- (e) democratic structures, e. g. spokespersons for groups
- (f) Free time, gaming, school

As the right to information has already been sorted out from the set of fundamental rights which must be warranted during a crisis, it is most interesting that the same right builds even point one of Juen's enumeration.

Her view point is also further affirmed by the Guidelines on Mental Health and Psychological Support in Emergency Settings of the Inter-Agency Standing Committee: Its Matrix of Interventions to protect mental health ³¹⁷ lists on place eight of altogether eleven the task: "Dissemination of information". ³¹⁸

This insight leads to the conclusion that information, although it is not guaranteed by legal standards, is notwithstanding important in other regards. This issue will be discussed with the upcoming chapter.

³¹⁵ Cf. Juen 2016, slide 14.

³¹⁶ Cf. Juen 2016, slide 23.

³¹⁷ Cf. Inter-Agency Standing Committee 2007, page 21.

³¹⁸ Inter-Agency Standing Committee 2007, page 28.

Die vier Ebenen der psychosozialen Unterstützung



Fig. 3: The four levels of psychosocial support.

Source: Juen (2016, slide 14)

7 The information that is legally mandatory versus the information that is needed by the affected people

The above investigations led to one main insight: The task is not done by mandating the kind and the amount of information which people need during a crisis. This task of effective information transfer is, indeed, twofold: ***One part of it, of course, can be mandated by norms and laws.*** But, these obligations of the governments to protect human rights are parts of a creative leeway.³¹⁹ And, due to the specific features that characterize the crisis as unique, it seems impossible to concise this framework.

The other part is what I want to name soft requirements – these are **requirements**, and they are by no means less than that - but they are **not measurable in a positivistic sense**. To fulfill that task the responsible crisis communicators need experience and empathy. With this last chapter previous to the conclusion, I will ask well-experienced crisis communicators for recommendations and try to highlight the differences between mandatory and emotionally needed fulfilment of crisis communications.

7.1 The information people need in a crisis emotionally

With chapter 6.3, the different levels of risk management have been mentioned. These are crucial for the present issue, as what has been discussed with the ***chapters 1 to 6 entirely belongs to the upmost level, the normative one, and thus to the society's conception of legality.*** The dilemma to prove the existence of the fundamental right to freedom of information has made obvious that there has been a missing link in this conception and the crisis itself: From a normative point of view, apparently, the question for integrated crisis management cannot satisfactorily be answered.

³¹⁹ Cf. Grabenwarter 2009, page 139. Grabenwarter certifies the „Gestaltungsspielraum“ [creative leeway] with regard to page 139.

The four reasons for this conceptual conflict are:

- (a) Every crisis is unique.³²⁰ Therefore, it's hard to frame it commonly on a legislative level.
- (b) The perception of the crisis situation is not primarily oriented at the absolute truth, instead the crisis perception is a **construction** of reality³²¹ which can be influenced by aspects far apart from true facts.
- (c) The crisis does not happen in vacuo. The own values, emotions and political attitudes affect the individual manner of reaction³²², therefore the afflicted might receive a distorted image of reality.
- (d) The crisis situation augments counterfactual thinking.³²³

Therefore, officials come to their decisions on crisis management and communications processes in dependence to the current situation on the strategic and the operational level.³²⁴ Consequently, we have to sort the crisis setting into two dimensions: The technical / marginal dimension and the emotional dimension.³²⁵ The technical / marginal dimension can be treated almost entirely with norms and provisions. The emotional dimension can by no means be decided on a normative or a strategic level, this one must be approached closely, therefore, it can only be responded on the operational level.

This operational level faces the four features which are listed above. Interestingly, in the recent decade the branch of critical discourse analysis has taken notice of crisis communications research.³²⁶ The fusion of crisis communications research and critical discourse analysis research is, evidently, at its beginning but it is supposed to

³²⁰ Cf. Sandman 2004, page 1.

³²¹ Cf. Volgger et alii 2006, page 11.

³²² Cf. Sandman 2004, page 3 & Sturges 1994, page 300.

³²³ Cf. Coombs / Holladay 2010, pages 183 – 184.

³²⁴ Cf. Volgger et alii 2006, page 5; in this context, I assume that the strategic and the tactic levels are exchanged, compared to the figure of chapter 6.4. There are two different perceptions of these levels as follows: normative – strategic – tactic – operational. (equals chapter 6.4) Alternatively: normative – tactic – strategic – operational. The latter, obviously, was employed by Volgger et alii.

³²⁵ Cf. Volgger et alii 2006, page 9.

³²⁶ Cf. Dunn / Eble 2015.

be enforced in the upcoming years.³²⁷ Timothy W. Coombs who has already acknowledged the aspects of constructing reality with his work in 2010, of course, belongs to the pioneers of the crisis perception influenced by critical discourse analysis.

Also, Sabine Volgger and her co-authors highlight the obstacle of true facts to penetrate the individual or collective reception of reality.³²⁸

These various approaches pay tribute to the insight, that “die Information zu Fakten, Zahlen und etwaigen Perspektiven nicht aus[-reicht], [dass] auch auf die Emotionen und Gefühle des Empfängers eingegangen werden [soll].“³²⁹ Especially, as the perception of the crisis as such is not the perception of the pure reality. Coombs and Holladay in their situational Crisis Communications Theory point to the fact that the perception of the audience is partly counterfactual during a crisis.³³⁰

Mostly one stakeholder is affected with the pitfall of counterfactual thinking: the layer persons. But, there is a second audience that even can help to avoid trapping into the counterfactual-thinking pitfall: the media. Dependent on which specific crisis is considered, there can be far more stakeholders entering the scene, regarding the theorists who are mainly employed for the present paper these are mainly consumers and employees.³³¹ Here, the above discussed examples shall remain focused, therefore, I assume the existence of three different audiences: the media, the entire public that usually consumes the mentioned media³³², and the so-called **qualified public**, that is the group of persons who are directly affected by the disaster and includes helping layers as those who are bereaved.

The latter group is the group of concern for the present paper: These are the persons who react hysterically or emotionally and whose perceptions crisis communicators try to reach, partly via the media as the first stakeholder of the public, partly by assemblies of the afflicted neighborhood. – This is where Peter M. Sandman’s model encroaches: Enabling ordinary people to help themselves, and –

³²⁷ Cf. Dunn / Eble 2015, page 733.

³²⁸ Cf. Volgger et alii 2006, page 11.

³²⁹ Cf. Volgger et alii 2006, page 9.

³³⁰ Cf. Coombs / Holladay 2010, pages 183 – 184.

³³¹ Cf. Walaski 2011, page 24.

³³² Expectedly, entire Austria regarding the cable car disaster, entire Hungary regarding the red sludge disaster.

in the best case scenario – additionally help their neighbors.³³³ Altogether, Lanard and Sandman published 25 crisis communications recommendations of which the first 14 are quoted below:³³⁴

- i. Don't over-reassure.
- ii. Put reassuring information in subordinate clauses.
- iii. Err on the alarming side.
- iv. Acknowledge uncertainty.
- v. Share dilemmas.
- vi. Acknowledge opinion diversity.
- vii. Be willing to speculate.
- viii. Don't overdiagnose or overplan for panic.
- ix. Don't aim for zero fear.
- x. Don't forget emotions other than fear.
- xi. Don't ridicule the public's emotions.
- xii. Legitimize people's fears.
- xiii. Tolerate early over-reactions.
- xiv. Establish your own humanity.

These remarks can be summarized with the latter recommendation which is a plea for an empathic intercourse with the victims of a crisis. This assumption is fostered by recent research on public relations issues that found out that a responsible person who shows sympathy with the public's emotions usually generates a more positive perception during a crisis.³³⁵ The recommendations of Sandman can be named ***soft requirements, as contrasted with the legal requirements.***

7.2 Requirements on information, sources of information

Besides the soft requirements, evidently, there is the need to fill "information holes"³³⁶ that the crisis anyhow has created. That is the other side of the coin in the hands of operational disaster relief forces. Above, its first side has been described as the

³³³ Cf. Sandman 2004, page 2.

³³⁴ See: Lanard / Sandman 2004 b, page 3.

³³⁵ Cf. Schultz / Utz / Göritz 2011, page 21.

³³⁶ Liu / Fraustino / Jin 2016, page 627.

need for addressing the emotional outrage of the public. The second side is the technical one where the impact of fundamental rights plays a crucial role. The present subchapter gives **answers to the questions for technical needs on the operational level of crisis communications.**

Let us first discuss **which** information of the technical side is required in case of a crisis. Sociologically, affected persons will process the acquired information according to a certain course that runs: **understanding** (ascribing meaning to the message) – **believing** (acknowledging the exactness of the information content) – **personalizing** (reading the information's meaning for the personal situation) – **deciding** (choosing an adequate action).³³⁷ For initiating that process, matter-of-fact-reports are required. These reports are delivered by official representatives relying on legal standards. Subsequently, they are spread by the media.

The sociologically proved way of processing, again, applies to the sensitive stages prodromal and acute, as it results in an immediate action. Consequently, people then have to be informed about the actions that shall be taken next.³³⁸ David L. Sturges, an US-American professor of management and organizational communication, distinguishes three categories of crisis communications' content:³³⁹

- (a) instructing information = explanation of the adequate physical reaction to a crisis;
- (b) adjusting information = (technical) information that renders coping with the crisis psychologically possible;
- (c) internalizing information = information the enables people to formulate an image of the distributing organization.

The agenda setting for the immediate next step is fulfilled by the instructing information. It has been proved scientifically, that the preparedness to react to instructions is especially high when these are announced by an official.³⁴⁰

Simultaneously, Sturges points out, that the demand for the aspects has to be weighted differently from crisis stage to crisis stage.³⁴¹ A study on the use of Twitter for crisis management results in the insight that information on the exact kind of

³³⁷ Cf. Liu / Fraustino / Jin 2016, page 629.

³³⁸ Cf. Sturges 1994, page 307.

³³⁹ Cf. Sturges 1994, page 308.

³⁴⁰ Cf. Howard et alii 2017, page 141.

³⁴¹ Cf. Sturges 1994, page 308.

hazard that emerges from the crisis and on the recommended behavior is most important for the affected people:

“In addition to consistent reTweets of general warnings, emergency managers and government agencies would do well to consider the relative importance of repeated messages concerning specific behavioral advice. Messages related to the whereabouts of others, food and water, shelter, evacuation, safety, and relief efforts have been demonstrated as essential under these circumstances; yet, they are largely absent in the current data.” ³⁴²

With the study of Amanda Howard et alii it has been emphasized, that affected people have different levels of access to disaster related information. ³⁴³ Adding the lecture of Barbara Juen to this knowledge that frames the access to information as key concept of the psychological support, raises the question on how and with which media crisis communications shall be handled. It has been reported, that various channels are used to gather information about the crisis. ³⁴⁴ While elder people are likely to listen to the radio in case of emergency, families with young children tend to acquire information via mobile apps and social media. ³⁴⁵ Lobera et alii in their study on media-consumption in highly diverse districts in Spain, furthermore, point out, that the higher the educational level the more written press and internet media are used. ³⁴⁶ What seems to be consistent in all the studies that have been conducted on this issue, is the insight, that **trust matters** the most for the emotional reaction,³⁴⁷ their ability to cope with the crisis, ³⁴⁸ and their willingness to follow evacuation instructions.³⁴⁹

Most important, “the trust seemed to be primarily directed at government authorities and particularly emergency services (e.g., Police, Fire/Rural Fire, Ambulance and State Emergency Services).” ³⁵⁰

³⁴² Spence et alii 2015, page 183.

³⁴³ Cf. Howard et alii 2017, page 139.

³⁴⁴ Cf. Howard et alii 2017, page 144.

³⁴⁵ Cf. Howard et alii 2017, page 143.

³⁴⁶ Cf. Lobera / Arco / Giménez 2017, page 44.

³⁴⁷ Cf. Claeys 2017, page 310.

³⁴⁸ Cf. De Vocht et alii 2016, page 325.

³⁴⁹ Cf. De Vocht et alii 2016, page 326.

³⁵⁰ Howard et alii 2017, page 142.

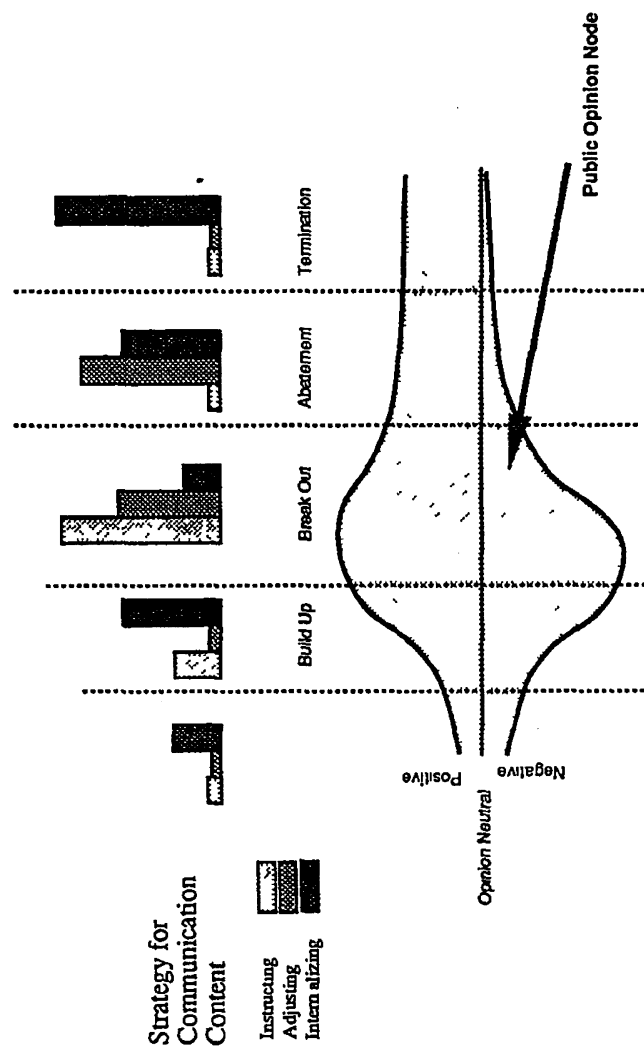


Fig. 4: The varying importance of three different dimension of crisis communications across Fink's four stages of a crisis.

Source: Sturges (1994, page 310)

8 Conclusion: Crisis communications must even achieve more than meeting the fundamental rights

8.1 Statements on the raised hypotheses

When I started to conduct the present research, I was mainly concerned with one question: **How can democratic standards be satisfied within the scope of crisis communications?**

At this time, I was convinced – and I summarized it in the appertaining hypothesis - that **it is possible to envelop standards of fundamental rights and international law into crisis communications processes**. The most crucial point, I supposed, will be the public relations service, and the quality of its interaction, not only via the media, but, first and foremost, towards the so-called qualified public, that means the people who are somehow directly afflicted by the crisis, e.g. relatives of victims or persons who own property within the afflicted area. [MH]

Having conducted this study, I cannot hold my main hypothesis any more: It is legally practicable to derogate from fundamental rights in crisis settings. The deviation from fundamental rights during crises is even assumed as *normal democratic proceedings*. That fact was illustrated by employing the International Covenant on Civil and Political Rights for the present study. Its article 4 that is called **Notstandsklausel** in German ³⁵¹ allows the exception from the most agreements made with this contract “in case of emergency”. ³⁵²

The right to freedom of information belongs to the exceptions, there is, therefore, no need to warrant it in crisis settings. For that reason, I had to exclude it from the investigations on the common conception of legality. Expressively protected, and consequently remaining valid in case of emergency stayed the right to life, the right to protection of personal data, and the right to property.

After a more precise scrutiny, the right to the protection of personal data as well appears to be restricted in crisis settings. At least, it will be the case in future, according to its new constitution on the European level with the General Data Protection Regulation that will enter into force on 25th March 2018. This regulation names as circumstances for the constraints on this fundamental right the protection

³⁵¹ Cf. Beham / Fink / Janik 2015, page 315.

³⁵² Cf. United Nations, General Assembly 1966/1976/1985, Art. 4, par. 1, page 134.

of “the vital interests of the data subject or of another natural person”³⁵³ and “the processing [...] necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.³⁵⁴

Besides the right to freedom of information, the right to protection of personal data has shown the most evidence according to the investigations of the two case studies of the present paper. Further studies have named it crucial, additionally, as the need of afflicted people to communicate has been proved to be very strong.³⁵⁵

The right to life remains valid in crisis settings, although – as Christoph Grabenwarter states – some restrictions can be imposed on the right to life by the **principle of effectiveness** and the **principle of proportionality**.³⁵⁶ Nevertheless, it is a principally absolute right which cannot be derogated.³⁵⁷

Last not least, also the right to property belongs to a government’s positive obligations.³⁵⁸ But simultaneously, the justification of an interference into the right to property can be valid within an ample scope.³⁵⁹ In case of **public interest** in the property, the **proportionality** to the individual fundamental right to property is given. According to the defence law character of the right to property,³⁶⁰ the reason for the interference in fulfilment of the public interest is then proved, sufficiently.

Empirical evidence out of the case studies has shown no clear hints to the right to life, and the right to property. It is assumed, that the specific character of both rights of being the ends, not the means is the reason for that.

Although, there is no clear correlation of crisis communications with the right to life and the right to property, I needed to explore them. I have emphasized, their character of being ends instead of means a few times during the course of this paper. That means, that these rights must not be employed actively themselves during crisis settings. But nevertheless, their appearance is an indicator for having protected the right to information during the crisis. As the ability to protect one’s life

³⁵³ European Parliament & Council of the European Union 2016, Art. 6, par. 1, subparagraph d, page 119.

³⁵⁴ European Parliament & Council of the European Union 2016, Art. 6, par. 1, subparagraph e, page 119.

³⁵⁵ Cf. Liu / Fraustino / Jin 2016, page 627.

³⁵⁶ Cf. Grabenwarter 2009, page 139.

³⁵⁷ Cf. Beham / Janik / Fink 2015, page 315.

³⁵⁸ Cf. Berka 2013, page 61 & Grabenwarter 2009, page 441.

³⁵⁹ Cf. Grabenwarter 2009, page 434.

³⁶⁰ Cf. Grabenwarter 2009, page 110.

and one's property, is the result (the end) of effective dissemination of information (the means). I will point to that insight in chapter 8.3.

With the issue of the main hypothesis I have raised further questions on the conception of legality referring to the two case studies of the present paper. At the beginning, I assumed, that the enlisted rights seem to be especially worth to be protected, that this can be shown by the **principal of proportionality** which ***requires the proportionality of actions that the government has set, and the resulting outcome.*** [H1] If a person has died or has been deprived of all her possession, the adequate action must have been such huge, that it seems impossible to meet. Clear guidance on the application of the crucial rights, even in case of emergency have been expected to be given with the EU General Data Protection Regulation, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Human Rights, and the International Covenant on Economic, Social and Cultural Rights. [H1]

Strong definitions of the rights of our concern have indeed be given with the above mentioned legal texts, but regarding the hypothesis on the principal of proportionality as a guardian of the protection of fundamental rights in crisis settings the clue went wrong.

As the Austrian judge Christoph Grabenwarter explains, all rights that have been chosen for this investigation require a legal basis for justifying an interference. ³⁶¹ This interference is argued either legally, or by the legitimate objectives, or by the principal of proportionality.³⁶² In the consequence, the **principal of proportionality can even cause an excuse for the deviation from fundamental rights in case of emergency.**

Furthermore, on the basis of the four stages of a crisis by Steven Fink, I assumed, that the last but one and the last stage are crucial for challenging crisis communications with democratic standards. [H2]

These are the four stages of a crisis established by Steven Fink: ³⁶³

(a) Prodromal: planning for the potential crisis by identifying hints for the crisis.

³⁶¹ Cf. Grabenwarter 2009, page 112.

³⁶² Cf. Grabenwarter 2009, pages 112 – 121.

(b) Crisis breakout: the earliest events as part of the crisis.

(c) Chronic: coping with the effects of the crisis.

(d) Resolution: The most dangerous effects of the crisis are resolved.

According to the results of the present investigation, this second hypothesis cannot be maintained. **The most important stages in reference to crisis**

communications and the guarantee of fundamental rights are, indeed, the prodromal stage and the acute stage of Steven Fink's model, according to the results of the present investigation. This must be highlighted as the anticipation to the second subordinated hypothesis, although neither the size nor the means of this master's thesis are sufficient to provide representative results.

But indeed, confirmation of this point of view is delivered, for example, by the Guidelines on Mental Health and Psychological Support in Emergency Settings of the Inter-Agency standing Committee (IASC), as it states: "[I]n the early phase of an emergency, social supports are essential to protect and support mental health and psychological well-being." ³⁶⁴

Simultaneously, the professor at the University Innsbruck and member of a crisis intervention team, Barbara Juen taught at the study course Risk Prevention and Disaster Management, that information is the key concept during the acute stage of mass accidents and disasters. ³⁶⁵ This assertion has two features which are most important for our concern: First, the right to freedom of information is essential during crises, secondly, the acute stage of a crisis is the most sensitive regarding informational issues.

Consequently, the initial stages seem to be very sensitive regarding the need for support – both on an operational and on a normative level. ³⁶⁶

The third research question asked what information is needed by citizens to cope with the crisis. I expected to get the answer to this question by using the concepts on crisis communications of Sabine Volgger, Peter M. Sandman, Pamela Walaski, and Timothy Coombs. **[H3]** I have left out the hypothesis, naming the **research question** [H3]. The investigations of the case studies and the scientific crisis communications literature have led to the insight, that crisis communications

³⁶³ Cf. Fink 1986/2002, page 20.

³⁶⁴ Inter-Agency Standing Committee 2007, page 1.

³⁶⁵ Cf. Juen 2016, slide 29.

³⁶⁶ For the definition of operational and normative see chapter 6.3.

cannot be made exclusively on the basis of technical information. But additionally, communications that meet the emotional dimension of a crisis are required.³⁶⁷ How the requirements of the technical dimension can be met, is sufficiently explained by the crisis communications classic of David L. Sturges. He distinguishes three categories of crisis communications' content:³⁶⁸ The instructing information that recommends an adequate physical reaction, the adjusting information that facilitates psychological coping, and the internalizing information that rebrands the image of the organization.

As we have pointed out during this investigation, it is not enough to meet this technical dimension of crisis communications, the additional challenge is to help the affected people coping with their experiences emotionally.

The theory of Peter Sandman was mainly employed to resolve this challenge: Sandman gives a complex hands-on-advice that advises against the pitfall of reassuring³⁶⁹ which equals the assertions of Barbara Juen and Cornel Binder-Krieglstein on occasion of the lecture on psychosocial support systems.³⁷⁰ Sandman and his wife Jody Lanard published altogether 25 recommendations of that kind, among the are the recommendations to acknowledge uncertainty, to err on the alarming side, and to avoid ridiculing people's emotions.³⁷¹ All these recommendations I have named **soft requirements**, as contrasted with the legal and technical requirements.³⁷²

The question **which information** citizens need is accompanied by a forth question on **where citizens acquire useful information**. The related **forth hypothesis read, that people take governmental sources much more serious than the assertions of common media**. [H4]

The hypothesis [H4] can widely be maintained: While people, evidently, use a broad variety of channels to acquire information,³⁷³ the assumption, that they trust governmental sources the most has been proved by a qualitative study conducted in

³⁶⁷ Cf. Volgger et alii 2006, page

³⁶⁸ Cf. Sturges 1994, page 308.

³⁶⁹ Cf. Lanard / Sandman 2004 b, page 3.

³⁷⁰ Cf. chapter 6.3 of the present paper.

³⁷¹ Cf. Lanard / Sandman 2004 b, page 3.

³⁷² Concept as explained with chapter 7.1.

³⁷³ Cf. Howard et alii 2017, page 144.

Australia.³⁷⁴ Furthermore, the same study highlighted, that affected people have different levels of access to disaster related information.³⁷⁵ Lobera et alii added with their study on media-consumption in highly diverse districts in Spain, that the higher the educational level the more written press and internet media are used.³⁷⁶

8.2 Key findings apart from the research questions

First, we have found out that the ***right to information does not belong to the positive obligations*** of a government. Secondly, we acknowledged that it, nevertheless is accounted to the defence law, ***Abwehrrechte*** in German, that means that its fulfilment is called in by an three-step review that investigates the area of protection, determines the manner of interference, and justifies the interference – if possible.³⁷⁷

The entire defence law of the European Convention for the Protection of Human Rights and Fundamental Freedoms needs ***a legal basis*** for **justifying an interference**.³⁷⁸

This interference, we have thirdly discovered, is argued either legally, or by the legitimate objectives, or by the **principal of proportionality**.

Consequently, we have fourthly acknowledged the possibility of governmental interference into the fundamental rights, exemplarily with the consideration of the article 4 of the International Covenant on Civil and Political Rights.³⁷⁹ Therefore, the **proof of the emergency setting provides ample scope for the interference into the fundamental rights**, with three exceptions that are the prohibition of genocide, the prohibition of penal servitude, and the prohibition of torture.³⁸⁰ The interference into all other fundamental rights is allowed on the basis of the **principle of proportionality**.³⁸¹

³⁷⁴ Cf. Howard et alii 2017, page 142.

³⁷⁵ Cf. Howard et alii 2017, page 139.

³⁷⁶ Cf. Lobera / Arco / Giménez 2017, page 44.

³⁷⁷ Cf. Grabenwarter 2009, page 110; discussion with chapter 6.1 of the present paper.

³⁷⁸ Cf. Grabenwarter 2009, page 112.

³⁷⁹ Cf. United Nations, General Assembly 1966/1976/1985, Art. 4, par. 1, page 134; discussion with chapter 6.1 of the present paper.

³⁸⁰ Cf. Beham / Fink / Janik 2015, page 315.

³⁸¹ Cf. Beham / Fink / Janik 2015, page 315.

Consequently, the lack of freedom of information during the **prodromal and the acute stages of the red sludge disaster**, and the **lack of protection of personal data during the acute stages of the red sludge disaster and the cable car disaster**, can be acquiesced by international law. As the international law – affirmed by the **emergency provision, Notstandsklausel** in German – suffers violations of the fundamental rights to be conducted.

These circumstances suggest the more concise consideration of people's needs and feelings than of the abstract interactions of organizations or other legal entities.³⁸²

Nevertheless, nothing can belie the fact, that the information on the concrete situation and extent of the crisis must be actively generated by the user of the information himself, respectively by the citizen.³⁸³ In order to facilitate access to the information, figuratively and psychologically, crisis communications need to fulfil **soft requirements** which are informational aspects that cannot be measured in a purely positivistic sense.

This due to the main feature of a crisis, its uniqueness, that “makes it challenging to identify universal prescriptions of good practice.”³⁸⁴ Nevertheless, the members of the Inter-Agency Standing Committee state, some actions can be recommended for almost every emergency-setting.³⁸⁵ Among them is the use of media “to provide accurate information that reduces stress and enables people to access humanitarian services.”³⁸⁶

8.3 Personal annotations

As the two case studies showed up, disasters and crises are challenges for the maintenance of fundamental rights. This has been at issue already for the pioneers of risk and crisis communications like Regina Lundgren and Andrea McMakin who published the first edition of their “Handbook on Communicating [...] Risks” in 1998. Lundgren and McMakin concluded: „[P]oor risk communication, accompanied by

³⁸² Cf. Liu / Fraustino / Jin 2016, page 627.

³⁸³ Cf. Rudolf-Miklau 2014, page 183.

³⁸⁴ Inter-Agency Standing Committee 2007, page 13.

³⁸⁵ Cf. Inter-Agency Standing Committee 2007, page 13.

³⁸⁶ Inter-Agency Standing Committee 2007, page 15.

unresponsive risk management, may cause those at risk to perceive a lack of equity.”³⁸⁷

As Timothy Coombs highlighted by establishing his Situational Crisis Communication Theory (SCCT), tribute to this respect towards the human dignity is paid by respecting the need of affected persons to acquire information. Coombs states: “[First] All victims or potential victims should receive instructing information, including recall information. This is one-half of the base response to a crisis. [Second] All victims should be provided an expression of sympathy, any information about corrective actions, and trauma counseling when needed. This can be called the ‘care response’. This is the second-half of the base response to a crisis.”³⁸⁸

Coombs herewith precisely described what the German legal expert Andreas von Arnould names „Menschenrechtliche Informationspflichten“. ³⁸⁹ Von Arnould, in my opinion, stuck straight to the point by concluding: “Die Verantwortung des informationspflichtigen Staates gründet sich auf dessen Schutzpflicht für die bedrohten Menschenleben. [...] Eine Informationspflicht besteht, der Verstoß gegen sie wird aber praktisch nur einen Anspruch auf Genugtuung auslösen.“³⁹⁰

Contrasted with von Arnould, I’m not a legal expert and will, therefore, be vigilant against reasoning his conclusion legally. Instead, I can give reasons to von Arnould’s conclusion from a practical point of view, remembering the concluding advice of Franz Lang to me, at the end of our interview: **The uniqueness of the crisis renders the establishment of common regulations impossible.** Therefore, I heeded to the advice to “avoid writing a state-of-the-art-catalogue [...] as no disaster fits with the other.”³⁹¹ Simultaneously, herewith I wrote the plea to **keep the debate on menschenrechtliche Informationspflichten vital.**

³⁸⁷ Lundgren / McMakin 2004, page 67.

³⁸⁸ Coombs 2010, page 42.

³⁸⁹ Arnould 2005, page 294.

³⁹⁰ Arnould 2005, page 310.

³⁹¹ Lang 2017, part 2 / 23:48 minutes.

9 List of references

- ARNAULD, Andreas von: *Völkerrechtliche Informationspflichten bei Naturkatastrophen*, in: Archiv des Völkerrechts, Vol. 43, No. 3, 2005, pages 279 – 311.
- AUSTRIAN POLITICIAN: *Unglaublich: Die EU empfahl die Alu-Unfallfabrik in Ungarn als Vorzeigeanlage*, Vienna, 2010.
- AUSTRIAN POLITICIAN IN BRUSSELS: Short briefing on red mud disaster in Hungary, Brussels, 2010.
- AUSTRIAN STANDARDS INSTITUTE: *OeNORM S 2304 – Integriertes Katastrophenmanagement. Benennungen und Definitionen*, Vienna: Austrian Standards plus, 2011.
- BAKOND, György: *Foreword by the Director General*, in: National Directorate General for Disaster Management (ed.): Red Sludge. Hungary 2010, folder, without location: Hungarian Government, without year of publication, pages 2 - 5.
- BEALE, Chris J.: *Recent Railway Industry Accidents. Learning Points for the Process Industries*, in: Trans IChemE, Vol. 80, Part B, Manchester, 2002, pages 25 – 32.
- BEHAM, Markus / FINK, Melanie / JANIK, Ralph: *Völkerrecht verstehen. Lehrbuch*, Vienna: facultas, 2015.
- BERKA, Walter: *Die menschenrechtliche Verantwortung für den Schutz vor Katastrophen*, in: Giese, Karim / Holzinger, Gerhart / Jabloner, Clemens (eds.): Verwaltung im demokratischen Rechtsstaat. Festschrift für Harald Stolzlechner zum 65. Geburtstag, Vienna: Verlag Österreich, 2013, pages 57 – 70.
- BUSSJÄGER, Peter: *Katastrophenprävention und Katastrophenbekämpfung im Bundesstaat*, Vienna: Wilhelm Braumüller, 2014.
- BUSSJÄGER, Peter: *Katastrophenhilfe und Bundesstaat*, Vienna: Speech, 2016.
- CLAEYS, An-Sofie: *Better safe than sorry: Why organizations in crisis should never hesitate to steal thunder*, in: Business Horizons, Vol. 60, 2017, pages 305 – 311.
- COOMBS, W. Timothy: *Parameters for Crisis Communication*, in: Coombs, W. Timothy / Holladay, Sherry J. (eds.): The Handbook of Crisis Communication, West Sussex: Blackwell Publishing Ltd., 2010, pages 17 - 53.
- COOMBS, W. Timothy / HOLLADAY, Sherry J.: *Examining the Effects of Mutability and Framing on Perceptions of Human Error and Technical Error Crises: Implications for Situational Crisis Communication Theory*, in: Coombs, W. Timothy / Holladay, Sherry J. (eds.): The Handbook of Crisis Communication, West Sussex: Blackwell Publishing Ltd., 2010, pages 181 – 204.

COUNCIL OF EUROPE: *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome: Members of the Council of Europe, 1950, published in: European Court of Human Rights & Council of Europe: European Convention on Human Rights, Strasbourg, 2002.

COUNCIL OF EUROPE: *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, Paris: Members of the Council of Europe, 1952, published in: European Court of Human Rights & Council of Europe: European Convention on Human Rights, Strasbourg, 2002.

DETRAZ, Nicole / PEKSEN, Dursun: *In the Aftermath of Earth, Wind, and Fire: Natural Disasters and Respect for Women's Rights*, in: Human Rights Review, Vol. 18, Dordrecht: Springer Science and Business Media, 2017, pages 151 – 170.

DE VOCHT, Melanie et alii: *Won't we scare them? The impact of communicating uncontrollable risks on the public's perception*, in: Journal of Risk Research. Vol. 19, No. 3, 2016, pages 316 – 330.

DIRECTORATE OF THE MAL Ltd.: *Press release*, 2010, accessible: http://deutsch.mal.hu/engine.aspx?page=showcontent&content=Vorosiszap_HIR_DE (16th November 2016).

DUNN, Carolyn / EBLE, Michelle F.: *Giving Voice to the Silenced: Using Critical Discourse Analysis to Inform Crisis Communication Theory*, in: Journal of Business Ethics, Vol. 132, Dordrecht: Springer Science and Business Media, 2015, pages 717 – 732.

ELLER, Klaas Hendrik: *Grundrechte im Katastrophenschutz*, in: Kloepper, Michael/ Meßerschmidt, Klaus: Anmerkungen zum Katastrophenrecht, Dokumentation der Arbeitsgruppe „Katastrophen und Recht“, 2. Gesellschaftswissenschaftliches Kolleg der Stiftung des deutschen Volkes, Berlin: Studienstiftung des deutschen Volkes, 2008 & 2009 [publication as a result of many working meetings in the years 2008 AND 2009], pages 31-37.

ESCALERAS, Monica / ANBARCI, Nejat / REGISTER, Charles A: *Public sector corruption and major earthquakes: A potentially deadly interaction*, in: Public Choice, Vol. 132, 2007, pages 209 – 230.

EUROPEAN COURT OF HUMAN RIGHTS: *Case of Budayeva and others v. Russia*, first section, judgment, Strasbourg: Council of Europe, 2008.

EUROPEAN PARLIAMENT & COUNCIL OF THE EUROPEAN UNION: *General Data Protection Regulation*, in: Official Journal of the European Communities, No. 5419/16, Brussels: European Union, 2016, pages 1 – 260.

EUROPEAN PARLIAMENT & COUNCIL OF THE EUROPEAN UNION: *Directive on the protection of individuals with regard to the processing of personal data and on the free*

movement of such data, No. 95/46/EC, in: Official Journal of the European Communities, No. L 281, Brussels: European Union, 1995, pages 31 – 50.

EUROPEAN UNION: *The Treaty on the Functioning of the European Union*, consolidated version, in: Official Journal of the European Union, 26.10.2012, C 326/50, Brussels: EU, 2012.

FEARN-BANKS, Kathleen: *Crisis Communications. A Casebook Approach*, First edition, London and New York: Lawrence Erlbaum Associates, 1996. Online library: <http://lib.mylibrary.com.uaccess.univie.ac.at/Open.aspx?id=944874> (28th June 2017)

FINK, Steven: *Crisis Management: Planning for the Inevitable*, revised edition with a new foreword, Lincoln: Authors Guild Backinprint, 2002 (1986).

FINNISH POLITICIAN IN BRUSSELS: *Questions on the red mud disaster in Hungary*, face-off with the European Commission, Brussels, 2010.

FUCHS, Claudia: *Katastrophenhilfe*, in: Pürgy, Erich (ed.): *Das Recht der Länder*, Vol. 2, No. 1, Vienna: Jan-Sramek, 2012, pages 241 – 255.

FUCHS, S. et alii: *The long-term development of avalanche risk in settlements considering the temporal variability of damage potential*, in: *Natural Hazards and Earth System Sciences*, No. 5/2005, European Geosciences Union, 2005, pages 893 – 901.

FUSSEL SICO, Hillary / COLLINS, Erik L. / ZOCH, Lynn M.: *Through the looking glass: A decade of Red Cross crisis response and situational crisis communication theory*, in: *Public Relations Review*, Vol. 36, No. 1, 2010, pages 21 – 27.

GODEYSEN, Hubertus: *Gletscherbahn-Katastrophe: Die Schande von Kaprun*, in: *Die Zeit*, weekly newspaper, 05.11. 2009, No. 46, online access point: <http://www.zeit.de/2009/46/A-Kaprun-Katastrophe/komplettansicht> (access: 07. August 2017).

GRABENWARTER, Christoph: *Europäische Menschenrechtskonvention. Ein Studienbuch*, 4. Edition, Munich: C.H. Beck, 2009.

GREEN LEFT HUNGARY: *Red mud disaster – at Kolontár, Devecser and Somlóvásárhely is just the beginning*, Emergency Resolution, Budapest, 2010.

GREENPEACE: *Greenpeace deckt illegale Abwasserleitung der MAL Ltd. Auf*, original text media release, Austria: OTS. Budapest, Vienna, 2011, 1 page.

HARMS, Rebecca / COHN-BENDIT, Daniel: *EU-action on the Red Mud Disaster in Hungary*, Open Letter of the The Greens | European Free Alliance, Brussels: European Parliament, 29th October 2010.

HEATH, Robert L.: *Crisis Communication: Defining the Beast and De-marginalizing key publics*, in: Coombs, W. Timothy / Holladay, Sherry J. (eds.): *The Handbook of Crisis Communication*, West Sussex: Blackwell Publishing Ltd., 2010, pages 1 – 14.

- HOWARD, Amanda et alii: *"They'll tell us when to evacuate": The experiences and expectations of disaster-related communication in vulnerable groups*, in: The International Journal of Disaster Risk Reduction, Vol. 22, 2017, pages 139 – 146.
- INTER-AGENCY STANDING COMMITTEE: *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, Geneva: IASC, 2007.
- JELLINEK, Georg: *System der subjektiven öffentlichen Rechte*, second reviewed and supplemented edition, Tübingen: Mohr/Siebeck, 1905.
- JUEN, Barbara: *Medizinische und psychosoziale Aspekte von Katastrophen*, Vienna: Speech, 2016.
- KÁTAI-URBÁN, Lajos/ CÉSPLÖ, Zoltán: *Disaster in the Ajka Red Sludge Reservoir on 04 October 2010*, Speech at the Sixth meeting of the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents, both speakers are representatives of the Hungarian National Directorate General for Disaster Management, The Hague: United Nations, 8th to 10th November 2010, 20 slides.
- KEEFER, Philip / NEUMAYER, Eric / PLÜMPER, Thomas: *Earthquake Propensity and the Politics of Mortality Prevention*, in: World Development, Vol. 39, No. 9, 2011, pages 1530 – 1541.
- LANARD, Jody / SANDMAN, Peter [a]: *Crisis Communication. Recommendations explained*, 2004 a, source: https://www.cdc.gov/nceh/tracking/conf04/pdfs/thu/ses4A/j_lanard.pdf (11th May 2017).
- LANARD, Jody / SANDMAN, Peter [b]: *Four Kinds of Risk Communication in Community Outreach*, attribution to the Environmental Public Health Tracking Conference, Philadelphia, 2004 b.
- LANG, Franz: *Interview on the cable car disaster near Kaprun on 11th November 2000*, Vienna: Directorate of the Austrian Federal Criminal Police Office, 2017, Appendix of this paper.
- LIU, Brooke Fisher / FRAUSTINO, Julia Daisy / JIN, Yan: *Social Media Use During Disasters: How Information Form and Source Influence Intended Behavioral Responses*, in: Communication Research, Vol. 43, No. 5, 2016, pages 626 – 646.
- LOBERA, Josep / ARCO, Víctor / GIMÉNEZ, Carlos: *Toward a multi-ethnic public sphere? Media consumption in highly diverse districts in Spain*, in: International Migration, Vol. 55, No. 2, 2017, pages 39 – 52.
- LUNACEK, Ulrike: *5th Anniversary of the Kolontár tragedy: instead of learning, we are waiting for the next catastrophe*, speech on occasion of the 5th anniversary, Straßbourg, 2015.

- LUNDGREN, Regina & McMAKIN, Andrea: *Risk Communication: A Handbook for Communicating Environmental, Safety, and Health Risks*, Third edition, 2004, Columbus: Battelle Press.
- LÜDEMANN, Dagny / GERHARD, Saskia: *Tsunami 2004. Man hätte Stunden gehabt, Menschen zu warnen*, in: Die Zeit. Online: <http://www.zeit.de/wissen/umwelt/2014-12/tsunami-indischer-ozean-flutwelle-jahrestag> (11th September 2017).
- MACENAITE, Milda: *From universal towards child-specific protection of the right to privacy online: Dilemmas in the EU General Data Protection Regulation*, in: new media & society, Vol. 19(5), Sage Publications, 2017, pages 765 – 779.
- MAYER, Gregor: *Allein gelassen nach der Rotschlammkatastrophe*. Report from Devescer and Kolontár. In: Der Standard, print edition, 1st March 2017, Vienna: Der Standard, 2017, page 6, accessible: <http://derstandard.at/2000053318094/Ungarn-Alleingelassen-nach-der-Rotschlammkatastrophe> (1st June 2017).
- MAYER, Gregor: *Notstand verhängt: Vier Tote durch Giftschlamm in Ungarn*, in: Der Standard. Print edition, 6th October 2010, Vienna: Der Standard, 2010, accessible: <http://derstandard.at/1285200000513/Notstand-verhaengt-Vier-Tote-durch-Giftschlamm-in-Ungarn> (16th November 2016).
- MEMBER OF THE EUROPEAN COMMISSION: *Red Sludge Catastrophe in Hungary*, Speech towards the plenary of the European Parliament, Brussels: European Parliament, 19th October 2010.
- MEMBER OF THE EUROPEAN PARLIAMENT: *Red Sludge Catastrophe in Hungary*, Speech towards the plenary of the European Parliament, Brussels: European Parliament, 19th October 2010.
- MEMBER OF THE GERMAN LOWER HOUSE: *Sachstandsvermerk zum Industrieunfall vom 4. Oktober 2010 in Ungarn*, Bonn, 2010.
- MEMBER OF THE EUROPEAN POLITICAL STRATEGY CENTER: *Follow-up of ENVI Committee meeting of 1 December 2010*, Brussels, 2010.
- MEYER, Harald J.: *The Kaprun cable car fire disaster – aspects of forensic organisation following a mass fatality with 155 victims*, in: Forensic Science International, Ireland, Elsevier, 2003, pages 1 – 7.
- NATIONAL CRISIS AND DISASTER PROTECTION MANAGEMENT: *Richtlinie für das Führen im Katastropheneinsatz*, Vienna: Ministry of the Interior, 2007.
- NATIONAL DIRECTORATE GENERAL FOR DISASTER MANAGEMENT: *Red Sludge. Hungary 2010*, folder, without location: Hungarian government, without year of publication.
- PEERS, Steve: *EU Justice and Home Affairs Law*, third edition, Oxford: University Press, 2011.

- POLZER, Andrea: *Staatliche Handlungspflichten bei Naturkatastrophen und Menschenrechte*, Magisterarbeit, Faculty of Law, Graz: Karl-Franzens-Universität, 2014.
- ROSHAN, Mina / WARREN, Matthew / CARR, Rodney: *Understanding the use of social media by organisations for crisis communication*, in: *Computers in Human Behavior*, Vol. 63, 2016, pages 350 – 361.
- RUDOLF-MIKLAU, Florian: *Naturgefahrenmanagement in Österreich. Vorsorge – Bewältigung – Information*, Vienna: Lexis Nexis, 2009.
- RUDOLF-MIKLAU, Florian: *Informationswirkung von Gefahrenzonenplanungen*, in: *Recht der Umwelt*, Vol. 5, 2014, pages 181 – 187.
- RUDOLF-MIKLAU, Florian: *Rechtspolitische und sozio-ökonomische Grundlagen der Risikoprävention und des Katastrophenmanagements*, Bruck an der Mur: Speech, 2016.
- SANDMAN, Peter M.: *Autobiography*, 2009, source: <http://www.psandman.com/bio.htm> (11th May 2017).
- SANDMAN, Peter M.: *Crisis Communication: A very quick introduction*, 2004, source: <http://psandman.com/col/crisis.htm> (11th May 2017).
- SCHINDLER, Thomas: *Rechtliche und organisatorische Aspekte der Katastrophenbewältigung und Wiederherstellung*, Vienna: speech, 2016.
- SCHULTZ, Friederike / UTZ, Sonja / GÖRITZ, Anja: *Is the medium the message? Perceptions of and reactions to crisis communication via twitter, blogs and traditional media*, in: *Public Relations Review*, Vol. 37, 2011, pages 20 – 27.
- SCHWEITZER, Ferenc: *Channel regulation of Torna stream to improve environmental conditions in the vicinity of the red sludge reservoir in Ajka, Hungary*, in: *Hungarian Geographical Bulletin*, Vol. 59, No. 4, Budapest, 2010, pages 347 - 359.
- SEVERAL MEMBERS OF THE EUROPEAN PARLIAMENT: *Hungarian plant still releasing toxic mud* (Greenpeace). WQ by Green MEPs, correspondence on the investigation, Brussels / Budapest / Vienna, 2011.
- SPENCE, Patrick R. / LACHLAN, Kenneth L. / LIN, Xialing / GRECO, Maria del: *Variability in Twitter Content Across the Stages of a Natural Disaster: Implications for Crisis Communication*, in: *Communications Quarterly*, Vol. 63, No. 2, 2015, pages 171 – 186.
- STURGES, David L.: *Communicating through crisis. A Strategy for Organizational Survival*, in: *Management Communication Quarterly*, Vol. 7, No. 3, 1994, pages 397 – 316.
- TAKACS, Viktoria / MATCZAK, Piotr: *Analysis of Civil Security Systems in Europe. Country Study Hungary*, Poznan: Adam Mikiwicz University, 2013.
- UMWELTBUNDESAMT GmbH – Prüfstelle für Umwelt-, GVO- und Treibstoff-Analytik: *Analyse einer Abwasserprobe der MAL AG, Ungarn. Prüfbericht Nr. 1102/050. Auftrag A 11057/AVH-Nr. 2490*. Wien, Umweltbundesamt, 2011.

UNITED NATIONS, General Assembly: *Universal Declaration of Human Rights*, Paris: General Assembly of the United Nations, 1948.

UNITED NATIONS, General Assembly: *International Covenant on Economic, Social and Cultural Rights*, in: UN Treaty Series, Vol. 993, New York: United Nations, 1983, pages 4 – 12.

UNITED NATIONS, General Assembly: *International Covenant on Civil and Political Rights*, in: Human Rights Quarterly, Vol. 7, No. 1, John Hopkins University Press, 1985, pages 132 - 154.

UNITED NATIONS, Human Rights Council: *Report of the Working Group on the Universal Periodic Review* Hungary*, Eighteenth session, agenda item 6, Geneva: Universal Periodic Review, 2011.

UNITED NATIONS, Human Rights Office of the High Commissioner: *Map on the Ratification of the International Covenant on Economic, Social and Cultural Rights*, 2017, online access point: http://www.ohchr.org/Documents/HRBodies/CESCR/OHCHR_Map_ICESCR.pdf (21st August 2017).

VOLGGER, Sabine (et alii): *Kommunikation vor, während und nach der Krise. Leitfaden für Kommunikationsmanagement anhand der Erfahrungen des Hochwasserereignisses Tirol 2005*, Innsbruck: Studia, 2006.

WALASKI, Pamela: *Risk and crisis communications: Methods and messages*, Hoboken/New Jersey: John Wiley & Sons, 2011.

10 List of Film Material

Schwarz, Ernst Johann/ Kogler, Günther/ Petschnig, Gundi: *Das Unglück – Kaprun*, in: Der Report, ORF, published at 14th November 2000, conducted at November 13th 2000 [day three of the cable car disaster], published by the ORF. Online source:

<http://tvthek.orf.at/profile/Archiv/7648449/Das-Unglueck-Kaprun/9421461/Das-Unglueck-Kaprun/9421462> (22nd September 2017).

THE GREENS I EUROPEAN FREE ALLIANCE: *The red sludge catastrophe*, Kolontár 2010 – 2015, published at 5th October 2015, published by DasStudioWien. Online source:

https://www.youtube.com/watch?v=QOT_f3fHz90&feature=youtu.be (22nd September 2017).

11 Appendices

11.1 Interview with General Franz Lang, Director of the Austrian Federal Criminal Police Office

The fire in the cable car tunnel near Kaprun erupted on 11th November 2000.

When exactly have you been informed about it?

I got to hear from the disaster on 11th November 2000 at 9.20 a.m. At this time, I got a call, while no one knew what exactly did happen in Kaprun. But, it was already known, that there happened an unimaginable huge disaster. – It should then appear to be the hugest disaster of the so-called Zweite Republik ³⁹² Austria.

From the beginning, it was clear that I myself would act as the head of the operations of the criminal police. – In that disastrous condition, it was an operational advantage to all relief forces that we had in the past, more exactly about one year ago, experienced the fire in the Tauerntunnel. – I'm not sure, if you remember that. It was a fire within the tunnel with 12 victims, 60 injured persons, and 40 out-burnet vehicles. – The fire department, the Red Cross Association and the police force, this time still the so-called Gendarmerie, have been involved all together with the fire in the Tauerntunnel. In other words, the whole disaster management process appropriate to our usual manner was activated about one year before Kaprun. Therefore, all the relief forces were already versed in working together by the time the Kaprun disaster happened.

Additionally, short before the Kaprun disaster there had already been a disaster with an avalanche at the Schmiedingerkees, in which twelve humans lost their lives. During that disaster, a similar disaster management procedure was activated.

Part 1 /2:50 minutes.

In Salzburg, at this time, the main actors of the disaster relief forces where well known to each other. For example, the Mr. Head-of-the-county's-ambulance-service Gerhard Huber was a close friend of mine, the same holds for the head of the fire department Salzburg Anton Brandauer, and additionally Roland Floimair, the head of the press office Salzburg was a good friend of mine - all these essential ties merged

³⁹² Annotation of the interviewer: Zweite Republik, which means literally translated "Second Republic", is the official name of the period after the defeat of the Naziregime in 1945 in Austrian historiography. For further information see: <http://www.geschichte-oesterreich.com/1945-heute/> (May 4th 2017).

to a powerful disaster relief force. Imagine that all the directors who were on the morning of this 11th November quickly driving to Kaprun already knew in advance how the procedures of this disaster management will look like.

You served within the high command of the relief forces? May I imagine it this way? You were there as the command of the criminal police?

Yes, I served within the high command, but for the entire police, not only for the criminal police. That was due to the fact, that the disaster of Kaprun appeared to become a criminal case altogether.

Part 1/ 3:06 minutes. That means in the consequence you must stay dynamic in those processes. As you entered the high command of the relief forces as a criminal police officer, until you step by step had to overtook all the police officer's tasks within the high command.

Exactly.

My third question: I've seen a very good report on the disaster's coverage by the ORF. Within that report you can among others see an interview with Karl-Heinz Wochermayr, who is quite exactly informing the public about the disaster management procedures. For example, he is summing up the amount of forces on the spot, and even sorting them by their sending organizations, among them the Austrian Army, and the fire department association of Salzburg.

Part 1/ 3:52 minutes. Exactly, Mr. Wochermayr was my deputy. He has overtaken the task force of the criminal police in that moment when I was called to overtake the entire police section as the head. Karl-Heinz Wochermayr had to investigate the reason for the outbreak of the fire within the tunnel.

Back to that exact assertions of Mr. Wochermayr in the interview with the ORF. Was it a conscious strategy to inform so offensively? Or was it a spontaneous, individual decision?

Part 1/ 5:03 minutes. The strategy was very strongly planned in advance. Arrived in Kaprun, we had immediately built an operational command, we constructed a political level within this command structure, and one level of experts, the mountain rescue, the Austrian Red Cross and so on. With regard to the police forces' tasks, we had even invited the Bavarian police force to join the command – 37 victims were German citizens. The Bavarian police officers got their own desk within the command center with their own computer and so on.

We have done a lot during this disaster management in Kaprun which is not self-evident in such a situation. – I will now show you the presentation for the reprocessing afterwards. Hopefully, that will answer most of your questions.

Part 1/ 6:38 minutes. Of course, the map of Kaprun is meanwhile well-known to you. The fire broke out here. It was a Saturday, wonderful, sunny weather, it has been an extremely warm autumn, that meant all and every people who wanted to go skiing to the East-Alps either for training or for free time activities travelled to Kaprun – within a radius, which imbedded Munich, Koblenz, Graz, and Vienna. At the time of the fire outbreak, there were already 5.500 humans staying in this region. – Within one second, everything stood still. – And, the waiting people did neither know what happened, nor when they will be allowed to continue.

Part 1/ 8:08 minutes. While above at the upper end of the cable car tunnel a huge smoke cloud had already emerged, one realized nothing at all down in the valley. Nothing! At! All! - Except of the cable car train having stopped.

There were three humans, as far as I remember, who ran downwards to escape the fire. They survived.

They were twelve.

Part 1/ 8:22 minutes. Now, please catch one glance on the site. – We did, evidently, not know, how many people had been in this train. Although, there are turnstiles at the entry to the cable car, there have been peer groups that were usually not registered by these. Those were ski-teachers on the one hand, as they used a separated entry, and little children on the other hand, as they were passing down under. There were many... there were a few children among the victims. Therefore, we did from the beginning not know for who many people we had to search. ***In the forthcoming train, we had to distort two victims, in the upward going train we registered 150 victims, and in the top station three victims. And, yes, twelve people - as you said - could escape by running downwards.*** It was such a lucky coincident, that they did so!

This is the situation in the top station - before the outbreak.

Why have there been victims among the people in the forthcoming train?

They choked. As the three victims in the summit station did. ***You need to imagine, there is that fire in this tunnel which is sloping steeply to the top and ending in the height of 3.000 meters – this creates a chimney effect par excellence. In such a situation, the smoke column is rushing through the tunnel with a speed***

of about 150 km/h. No one will be able to escape this at all, neither in the tunnel nor in the top station. Within 30 seconds the summit station will be so densely filled with smoke that you won't yet be able to see in a distance of 10 centimeters.

Part 1/ 10:25 minutes. And, all, all victims of this disaster have choked, then they've burnet. But first, they choked.

On this slide, you see the stakeholders of the coping phase: the forensics of Salzburg, criminal police of Salzburg, of Upper Austria, and of Styria, the fire department, the Red Cross, the Austrian Army, the psychological service of Salzburg, the crisis intervention teams of Salzburg.

Part 1/ 11:02 minutes. How many relief forces have been on the spot altogether?

One-thousand.

SILENCE.

Part 1/11:17 minutes. Herewith you see the overall structure which is emerging during the first part of the response phase. And, here you see the political level of the high command.

The members of the high command met two to three times a day to discuss: What is going to happen within the next few hours? Who is going to fulfill which task? And, who is going to the media conference to communicate the procedures to the public?

I'll just record to the voice recorder what I'm currently seeing (a tile-figure): At the beginning, you acted as the head of the command of the criminal police. Then, you served as head of the command of the entire police forces. Finally, in your official capacity as head of the command of the entire police you were delegated to the high command as well whose members met at least twice a day to discuss the most important issues.

Part 1/ 12:32 minutes. That is correct. In such a condition you have a thousand things to discuss. Routings, protective services, and a support- and information center for relatives were established. Within this center the relatives got psychological support, they got all information from us before the media were informed. In advance to every media conference two of us went into the information- and support-center to talk to these relatives. For example, we confessed across the relatives: "We do currently not know how many people burnet inside the tunnel. This

time, we are assuming that there are 140 victims.” – That was the amount we supposed after catching the first glance in the darkness.

Not before that talk to the relatives the media conference started. At the beginning, we did not make it exactly as aimed – but, apart from that starting difficulties we have always put the relatives on the first place.

Part 1/13:28 minutes. How many relatives were at this November 11th on the spot?

On the 11th there were not many. But, on the 12th and 13th November there were about 200 relatives on the spot.

Did it happen that anyone of the relatives did mistakenly communicate to the public?

At no time, we had a complete overview over what was communicated to the public, but our basic principle was to create one – and only that one – hub of information from which one can get everything that is necessary for him to know. We built this hub with three media conferences per day – at this media conferences exclusive information was daily given. But, outside these conferences no journalist could get any information in advance. None at all. It was one of the toughest tasks we had to handle, as every disaster relief force organization had its own media spokesperson. The army, the Red Cross, and so on. But, we have carried it out quite harshly. Once, I had to instruct one of my fellows to block a camera crew of the Austrian Army, and to accompany its members in their way off the scene. That meant to export these camera crew from the deployment site in order to avoid that the Austrian Army is forced to publish its own report on the disaster response.

This was a very awkward action with regard to the further co-operation, was it?!

Of course, it was heavily awkward!

We have then kept all the deployment site clear, we have barred the entire valley hermetically. Even, above the grounds in the mountains... One Swiss camera crew has tried to enter the deployment site via the glaciers during the typical storm of the Alps.³⁹³ We blocked them on the glacier, and brought them out of the site. We had to do that, as we were convinced, we were not in the position to commit those actions – that was due to several reasons, but mainly to that: For the first few days,

³⁹³ Annotation of the interviewer: During the interview there was not only once a talk of „Föhnsturm“ in German. This characteristic expression cannot be translated into English.

we had to bring all relief forces to the top station with helicopters. The flights with helicopters were quite risky as the helicopters dropped from time to time up to 50 meters downwards because of the typical storm of the Alps. I'm not sure, if you know the typical storm of the Alps?

About one third of our disaster relief forces could not stand that physically. For this one third we found other tasks down in the valley or even home in their bureaus. The two thirds who could stand these risky flights were sent to the top station, then they had to enter the way to the deployment site via a cross passage, then they needed to walk about 3.000 steps downwards, and then finally they had reached the deployment site. After they had finished their shift they had to walk once more 4.000 steps downwards in order to reach the valley. You see – this was a huge physical exertion for the relief forces.

They reached the valley after their work dirty and smelling.

Look at this picture, ³⁹⁴ here it looks quite plane but indeed it was very steep. – There you see the topmost lying corpse. He was a Japanese, aged twelve years, his corpse came to lie topmost as he obviously had tried to escape upwards. There he had burnet.

Of course, huge official delegations of all seven affected nations came to the deployment site. These were: Americans, Japanese, Slovenians, Dutchmen ... At the beginning, they tried to put us under huge pressure by communicating with the Ministry for Foreign Affairs. – We should first recover the Americans – or the Japanese. – We were not able to show them the pictures in order to prove that we cannot yet distinguish if one has been an American or a Japanese.

It led to discussions. We also feared that it would be made a subject of discussion in the media. This was only the case peripherally. We could handle it quite easily as we said to the representatives of the delegations: "Alright, if you know diplomats who don't believe that we're facing difficulties, send your own experts!" – Of course, these representatives knew the difficulties long since, they know it from air crashes.

Part 1/ 18:25 minutes. Every number stands for a burnet person. ³⁹⁵ That is how it looks like on the spot, while you have to work there. Naturally, we first waited until the fire had out-burnet. As no one would be able to extinguish a fire inside the tunnel

³⁹⁴ Annotation of the interviewer: General Franz Lang is showing pictures which give insights into the tunnel after the fire was extinguished.

³⁹⁵ Annotation of the interviewer: General Franz Lang is again showing pictures.

mechanically: If you tried, the relief forces had to go down thousands of steps with their heavy fire extinguisher on the back. – But, the information about such circumstances and decisions you can, of course, not deliver to the public. **Part 1/19:00 minutes.** Even if you took the heavy breathing protection, you have only 20 minutes time to work – then your oxygen is consumed.

How long did the shifts of the relief forces last? And at which day did you take that pictures of recovering the corpses? Was it the second day?

No, no, it was not. What you are seeing here is the fourth or fifth day. The first day was contingent on extinguishing the fire, on getting the scene free of smoke. On the second day, the relief forces were concerned with re-installation - that means with making the entire deployment site accessible. Because there is no electricity, and in the consequence no light, inside, a river ran through the tunnel – see there ³⁹⁶ – because everywhere we faced water inlet due to the heat that had been emerging during the fire. Additionally, about four tons of rocks were dissolved. We had to fear that the entire tunnel is going to collapse.

Part 1/20:08 minutes. Of course, we were at no time allowed to release these pictures to the public. That is how it looks like in the beginning. ³⁹⁷ That picture shows the organized, structured working process. – And, in comparison, that is the beginning. That is this very first moment when you cast the first light on the scene, when you switch on the first spot light. Then, next, we had to build up the entire communication structure. Otherwise it would have been too dangerous – in order to enable the relief forces to talk to each other – and to talk to the fellows outside. And, that is how the work starts. These are 150 corpses lying around there. ³⁹⁸ They are melded with the material of the former train. It must have been an extreme heat-development during the fire. And, so on...

Now, it becomes obvious to me that it was a special challenge for forensics. If you search for that specific disaster in scientific journals, you will mainly find forensic research papers. Now, I understand why.

Part 1/21:00 minutes. You are very right. That picture shows the handover. Our criminal officers, and the forensics have dissolved the body parts from the

³⁹⁶ Annotation of the interviewer: General Franz Lang is showing something glittering on an almost dark picture which is appearing as water.

³⁹⁷ Annotation of the interviewer: General Lang is pointing to a picture.

³⁹⁸ Annotation of the interviewer: General Franz Lang is showing a picture with a lot of black indefinite objects.

environment. With the dissecting knife. Millimeter per millimeter. Centimeter per centimeter.

Packaged that way ³⁹⁹ we overhanded them to the Austrian army to transport them to the top station. We have built an auxiliary-elevator on this day within the tunnel which was capable of driving on the damaged rails. From the top station the corpses were directly brought to Salzburg.

There you see it in the spotlight. This is number 49. And, this is how it looks when it is dissolved. The residual of a human being.

Part 1/ 21:55 minutes. SILENCE.

Part 1/22:05 minutes. Two and a half to three hours at work, then downstairs by feet. 3.100 steps downwards. This ⁴⁰⁰ was our last day. And, this was the descent in the outside. Down below was the station at the bottom. The way is passing over a large bridge in a height of 95 meters, so you had to be free from giddiness to. Therefore, we had an absolute block of journalists on the deployment site, because our fellows after three hours at work have come downwards completely exhausted.

Part 1/22:38 minutes. Simultaneously, they have known, we will ask them in the afternoon for a second shift. Otherwise, they are going to do the next shift on the next day. Then, after their last shift of that day, we brought them out of the site. Where we had hired an entire hotel of Kaprun with a huge wellness area in order to enable our fellows to relax.

Part 1/22:58 minutes. But, they came down from the deployment site. And first, they have slipped off their overalls, and slipped off their shoes. Mostly, we have thrown that shoes into the garbage. These have decomposed, partly. Then, they drank – in order to implement mental hygiene for themselves – one glass of beer. Additionally, these were relief forces who did not grieve boldly.

If you got that impression on a press release, that one of the disaster relief forces grinned slightly – and that picture, additionally, reached the relatives of one victim, then it stands completely to reason that relatives react very angrily.

But, imagine: These forces knew exactly, we are going to need five days to complete this mission. That meant, everyone had to enter the tunnel at least five times – maybe seven times or eight times. This was one of the main reasons, additional to

³⁹⁹ Annotation of the interviewer: On this picture you see corpses packed in olive-green plastics which are carried by white-closed men.

⁴⁰⁰ Annotation of the interviewer: General Franz Lang is again showing a picture.

all the dangers of these grounds, if you allow many journalists to walk there around, if you allow many reporters to watch the relief works, these were probably mainly the just described pictures which are likely to deliver completely wrong impressions to the public.

Part 2/ 00:20 minutes. Have you recognized? – All the clocks stopped at the same time. ⁴⁰¹

And, this is as well very important for the communications issue: The disaster happened at 09:05 a.m. Since 10:20 a.m. the phone hotlines of the community Kaprun were activated, a little later the hotlines of the Red Cross, and the mountain railways. We ⁴⁰² were responsible for the establishment of the Red-Cross-hotline which the fellows of the Red Cross overtook, immediately. Because we were convinced that soon one half of this world is going to call – with assertions like that: “I know, my nephew today went to skiing. Did he survive or not?”

Part 2/ 01:05 minutes. We have, immediately, established check points at the exits of the valley to investigate, who is sitting in the cars which went out of the valley. At this check points, we simply have asked the driver who are his co-drivers. According to their information we compiled lists, and put them in the support- and information center for relatives in Kaprun. Back then, we have as well put these survivors lists online. Later, I have been accused for doing so.

Part 2/01:30 minutes. That this is a breach of law. Yes, this is true, in all objectivity, because the drivers and their co-drivers in the leaving cars have not expressively signed that they are content with the publication. But, we needed it urgently as we knew exactly, there are 4.500 survivors. And, after we published the list, we could tell the relatives: “Please, go to this page. There are written all the names, of whom we know with certainty that they reached the valley safe and sound.

Part 2/02:13 minutes. This made the entire work much easier.

Part 2/ 02:25 minutes. These hotlines, were they staffed with fellows of the Red Cross, the mountain railways, respectively of the community Kaprun?

Yes, we mixed the staff for the hotlines strongly. I decided for the hotline on behalf of the police to engage students who were themselves living in Kaprun. They had the task to enter data into the system.

⁴⁰¹ Annotation of the interviewer: General Lang is showing pictures of the remains of the victims, e.g. gold teeth, clocks, jewelry.

⁴⁰² Annotation of the interviewer: By saying “we”, General Lang means the police forces.

Additionally, we were supported by Epic Gast Munich - that is the center for air safety of the Munich airport. They were well-prepared for an air crash, and therefore, already in 2000 had a specialized software in order to cope with such a mass fatality. With that software we could process callers. If the grandmother from Vienna was calling us with an assertion like: "My grandchild today wanted to go skiing in Kaprun", we were very grateful for her call. As we could put the name of that grandchild on the list with name that had to be processed further – and traced this grandchild. Except, the grandmother called a second time: "He meanwhile has called me." Then, we took his name from the list. But, as long as this did not happen, we traced the grandchild.

Part 2/ 03:55 minutes. And, on day 4 of the disaster, you have these 155 names of persons who probably have lost their lives in the tunnel. This is the system, as you don't have lists with passengers in that situation – which is the hugest difficulty. This is the background. But back then, we said from the beginning: "We will probably need three days until we can say who stayed in the tunnel."

Part 2/ 04:40 minutes. I'm currently thinking how you express that procedure in one word. Can this already be called "collective intelligence"?

I have no idea.

With the callers, by the way, we experienced crazy things. Some pretended they were relatives of a missed person... Such disasters have an appeal on different characters. These characters you need to be able to handle in this situation.

Part 2/ 06:17 minutes. The second task was to identify victims. There the public often wanted to know, at what time we could state with certainty that person xy has lost his life in the tunnel.

The identification runs that way: First, the DNA is taken from the victims we have found in the tunnel. Often, we had to drill it out of the bones as every other part of the body was burned. The DNA is then compared to the so-called ante-mortem-data. The ante-mortem-data are, for example, hair from a victim's brush or pillow, DNA-traces from his teeth-brush, from his towel or his underwear or something like that.

Part 2/ 07:17 minutes. And, with regard to that the hints of relatives loom large as you then know in which hotel room you have to search for DNA-traces.

Exactly, and this is an important point if you think of the public opinion. You have to prepare private persons slowly for their task to collect comparable DNA-material.

Part 2/08:20 minutes. In Kaprun, we have had a strict command-structure in which the public relations work was clearly defined. This structured work eased to answer the following questions: Who out of the command will attend the media conference? Who of these fellows will say what?

Additional to the building for the high command, we have placed two further buildings in Kaprun under confiscation, and blocked these hermetically. On the one hand, this was the building with the function of a press center which the news service of Salzburg has overtaken completely. The news service needed, first and foremost, a huge amount of electricity. We took responsibility for their supply with electricity and a strong telephone line. For that reason, we stood in contact with the provider A1.

At the peak, there were 150 camera crews on the scene. **Part 2/09:11 minutes.** And, there were 100 journalists. You have to care for these people! – And, we did! We cared for them with shelter, with a field kitchen, with beverages. – And, we did it twenty-four-seven!

In the nearest village we seized a school which was dedicated to become the support- and information-center for relatives. We blocked that center hermetically. In this case, the special mechanism was activated: The support- and information-center for relatives was administrated by the Austrian Army. Before the media conference started, three representatives of the Red Cross, the Fire department, and the Austrian Police went to the center to justify themselves across the relatives.

Part 2/10:03 minutes. Evidently, this was a quite emotional issue. And, it was the most emotional if our representatives had to say: “Unfortunately, I’m unable to answer your question.” But, all the representatives tried their best to answer all questions they were asked actively. As the basic principle ran: “No news from the media to be faced by relatives, but all the news from us.” **Part 2/ 10:21 minutes.** We have extended our care for the relatives in so far that we even put them all in buses – this action as well hermetically blocked from the journalists – the buses went to the deployment site. They went to the cable car station. We showed the relatives the place at which the disaster had happened. The relatives could watch the disaster relief forces working. They could see that six to seven helicopters were perpetually starting and landing. We even arranged meetings with the relief forces on the spot. We gave the relatives the possibility to talk to them. After two hours, we bagged

them into the buses again and brought them back to the support- and information-center of the relatives.

Part 2/11:05 minutes. We repeated that procedure with the buses every day. But, we were seriously on the watch in order to avoid that journalists may tried to sneak in.

Part 2/11:16 minutes. You answered exactly the question which I was, currently, preparing: When you talked about the tours to the deployment site, I was imagining that you had to keep these tours top secret, as Kaprun is not so big. How many people do live in Kaprun?

Indeed, Kaprun is not big. About 1.400 people are living there. In Kaprun itself every day we had to face a situation which was so unbearable that especially the citizens of Kaprun themselves developed a kind of phobia of journalists. **Part 2/11:53**

minutes. As the international media needed new stories every day. But, we delivered our final huge story on the fourth day after the disaster by saying: “We now know that we are searching 155 people. The identification processes have already started, we need to fetch data for comparison from the USA, from Japan, from the Netherlands – therefore, these processes will take a few days.”

Part 2/12:21 minutes. But, that was the final news from the relief forces side. That’s why the journalists started to search for stories in the environment of the deployment site: They caught worshippers after the church, they caught elementary school children after school. Of course, the citizens of Kaprun became very upset. This was the reason for us to leave the deployment site on the sixth fielding day. And, to quit the relief work there finally. That meant, we had to block the tunnel hermetically. We locked it electronically in order to prohibit even crazy people entering it. **Part 2/13:13 minutes.** We cancelled the operation. Finish! Then, the media will go away.

It worked: Within half a day all mobile units had left Kaprun. Instead, we had sent two very trustful camera operators to the deployment site of whom one was from the ORF regional studio in Salzburg and well known to us, in advance, the second one was one member of our own camera crew. The photo- and film material which the two had conducted we delivered to all media – and to every single medium in the equal extent. At the beginning, this led to an outraged discussion in the high command. As the representatives of the ORF were willing to deliver the photo- and film material to the public senders, but they refused to deliver their material to the private senders – for reasons which are still unknown to me. That led to a short but

severe conflict to whose reconciliation even the then Federal Chancellor Wolfgang Schüssel had to appear. Then, finally, it was as well offered to the private senders. That meant, all pictures and film material which had been conducted during the deployment was watched by one of my closest assistant and censored by him. The censored material was then offered to the media. It was published via the European Broadcast Union from the ORF itself.

Part 2/ 15:00 minutes. This was the service additional to three media conferences a day. And, of course, we permitted the relief forces to document their work, evidently exclusively for internal use. This internal documentary is even their duty. But, everything which was supposed to be published had to pass our media bureau.

Part 2/ 15:18 minutes. That meant an immense effort for the public relations only, did it?

Of course, it did!

Part 2/15:24 minutes. Can you estimate the effort for the public relations in comparison to the “residual” efforts of the deployment?

Part 2/ 15:33 minutes. With certainty, you have to spend 10 percent of your workforce for the public relations during the deployment.

Additionally, you need to understand the specific character of this region. This region is living from tourism! Therefore, they do not want that much information about this disaster is delivered to the public. This disaster for them was a second own disaster in itself. If you then produce, a lot of negative reports about the inability of the Austrian administration, about the inability of Austrian disaster relief forces, of the Red Cross, of the fire department, of the police than you produce, simultaneously, a very sustainable damage for the regional economy.

Part 2/16:30 minutes. This consciousness was in the minds of all disaster relief forces: We had to show professionalism, we had to represent consciously to the outside, we had to make sure that the ordinary people do not lose their trust.

Part 2/ 16:52 minutes. And, despites that consciousness and simultaneously to that consciousness, you have to adopt your balance as you sometimes have to confess: “I don’t know it yet!”

Part 2/ 17:00 minutes. To be honest, in average, out of three questions I have answered two with: “I don’t know it yet! We do not know the answer ourselves!”

Counterquestion: “Why?” Reply: “For this, and this, this reason.”

Part 2/17:25 minutes. Maybe, this is the much more important capability. Not only the honesty, but the openness to confess that you are unable to know it this time for a certain precisely described reason?!

Part 2/17:27 minutes. Exactly, you have to justify yourself. With pictures, it had been much easier for us to justify ourselves.

I remember this exactly, the Japanese embassy had sent 15 or 16 representatives. Seven or eight Japanese were among the victims.

Part 2/17:43 minutes. Eight, if I remember that correctly.

Part 2/17:46 minutes. The Japanese ambassador claimed that two police men should daily call on him in order to inform him. We answered: "There is an over-all-information."

Then, we had to explain to the ambassador why we were not rescuing the Japanese victims first. He required that they should be rescued first! – We answered: "No, we don't." – This answer made the ambassador very upset. Finally, a special ambassador from the Federal Ministry for Europe, Integration and Foreign Affairs was sent to Kaprun. – We separated him to an isolated room in order to show him the pictures from the deployment, across that we asked him: "Tell us who of these victims is Japanese?" – The Japanese ambassador has never asked his question again. But, that was in comparison quite easy to communicate.

Part 2/ 18:34 minutes. I want to ask you for a special situation which I have seen in the huge film material of the ORF: At one media conference, one of the ORF correspondents has asked for two reporters who had invaded the tunnel, had been captured there, their film material was seized, and they themselves were taken into safekeeping. Was it a single event or did similar situations happen a few times?

Part 2 /19:00 minutes. Altogether, that happened twice.

And, these attempts were dangerous! – As I have already mentioned, the typical storm of the Alps was dominating during our relief work. ⁴⁰³ The typical storm has two intrinsic features: On the summit, it is snowing horizontally; into the valley, the storm is falling vertically.

⁴⁰³ Annotation of the interviewer: During the interview there was not only once a talk of „Föhnsturm“ in German. This characteristic expression cannot be translated into English.

Part 2/ 19:40 minutes. But, in my opinion, as you have left the deployment site not before the seventh day, it was not exceedingly often that attempts to invade were undertaken twice.

Part 2/ 19:55 minutes. Yes, we began on a Saturday, and left the field on the seventh day, therefore, on the next Friday.

Part 2/20:10 minutes. On Wednesday, the first conflict with journalists in Kaprun appeared. Citizens, and journalists, I believe from the BBC. – The citizens just claimed: “Leave our children alone!” – The children, as well, had been exposed to the traumatic situation that they have lost friends in the tunnel.

Part 2/20:48 minutes. But, now we have arrived at the ethical discussion.

[Laughing.]

Part 2/21:00 minutes. But, actually, we have given all information we have been able to give. We gave pictures, films, professional films. We have invited the camera operator from the ORF. We have compelled him with a contract to the confidentiality obligation.

Part 2/ 21:26 minutes. Had there been a moment, at which you consciously decided in the high command to communicate as honestly as possible?

Part 2/21:50 minutes. The decision with regard to the media pictures we made on the second or third day. The pioneers of our honesty were the commanders themselves and the media spokesman of Salzburg. They all were well-experienced, even in their cooperation.

Part 2/ 22:38 minutes. Would you agree that the risk communication during the disaster is already created in accordance with the risk management framework? That means that, in advance, the manner of communication is fixed with the decision on the entire risk management. Would you agree with the statement catching a critical glance on your own experiences in Kaprun?

Part 2/ 23: 48 minutes. You need to distinguish carefully: The risk communication itself is - in its basic principles - equal in every disaster. But, only in these basic principles! It would be counterproductive to regulate that all strictly. ***So please, avoid writing a state-of-the-art-catalogue – like “paragraph 1 to 900 say...”. This would lead into the wrong direction as no disaster fits with the other.*** With reference to time, location, specific situation, with reference to the number of victims and available disaster relief forces and so on... **Part 2/ 24:19 minutes.** Especially in

the aftermath of Kaprun, there have been attempts, mainly in Germany, to establish regulations for mass casualties.

Don't misunderstand me: Basic principles are very important! But, common regulations won't fit from one disaster to the next. As they are too wired in details.

Part 2/24:51 minutes. The commander then has the choice:

First, shall I take the regulative catalogue which was established - to the best of one's knowledge and belief – in the aftermath of a train crash? – If I will fulfil all requirements of this regulations catalogue while coping with the crash in a highway tunnel, I can later on – during a trial due to some action for damages – testify with a good conscience that I have done all my best according to the regulations number 1 to 900.

Second, is it legitimized to decide that the regulations catalogue which was – to the best of one's knowledge and belief – established in the aftermath of a train crash, is inadequate for the crash in a highway tunnel? – If the things which need to be handled differently from the regulations, I will, actually, change, and if I will cancel some of the regulations completely while coping with the crash in the highway tunnel, then I will later on, if I have to stand trial as commander of the deployment, be asked: "You are familiar with the regulations catalogue? Why did you miss to fulfil the paragraphs 14, 22, and 133 of this catalogue?" -And, this way you might once have to stand trial in a lawsuit which was instituted in order to get the damages of the relatives of the victims paid. [Severe laughing.] – Do you now understand why I dissuade you from writing a regulations catalogue?

Part 2/ 26:10 minutes. I'm quite sure I got that point seriously! – But, as far as I got your point, our discussion had skipped from a technical to an ethical one: If you demand to fix only basic principles of the crisis communication, then I will be supposed to write down some kind of an universal moral which I imagine to be already obvious to every human being – but, to make that sure, I will fix it. Not more than that, for sure?!

Of course, there are basic principles:

First, establish a structure of contacts, in advance!

Second, these contacts must be aware of their position in the command!

Third, a final structure of the individual deployment is fixed not before the arrival at the site. This principle is very important as it represents the flexible approach to every disaster.

Fourth, communication:

Information to the outside is indefinitely important – as it calms the mood at the deployment site.

But, before every communication to the ordinary public there must be space for the communication to the so-called qualified public, that means the afflicted persons, and the disaster relief forces shall be informed well.

That are the most important principles for the communication. *But, to frame the media conference is not of high promise. Or to frame the format of the communication, like twitter, ots, or something else. – You should serve all channels, but, simultaneously, you must make sure that you do not overwhelm the public.*

Part 2/ 28:28 minutes. Exactly, I want to get down to exactly that tightrope!

Part 2/28:36 minutes. *One thing! One thing is but very important! The Americans have proved this fact within the previous years: The enlightened citizen is today able to fetch the information himself. And, he will evidently fetch his information there where he is convinced that he gets objective information. He will consider a few media after deciding which information is the most objective one, and in the chosen one he will believe.*

Part 2 / 30:38 minutes. What would you make better if you were from today put back to Kaprun in November 2000?

Part 2/ 30: 46 minutes. 50 percent! [Laughing.]

Part 2/ 31:10 minutes. In the disaster of Kaprun, we had one advantage: A huge advantage in experience.

When we drove to the community on this morning of the 11th November, we all did know how we want to handle a so far unknown situation. And, that is key. Have a coffee break together with your fellows, regularly! Evidently, in relaxed situations only. I swear, if the disaster then has happened, you will know that you can rely on these persons.

Part 2/ 34:38 minutes. I warm heartedly thank you! You have spent a lot of time for me. Thank you!

Part 2/34: 46 minutes. Good luck!

On the compatibility of freedom of information and principles of risk communication

I, General Franz Lang, born on November 14th 1958, herewith notice, that all my assertions with regard to the cable car disaster in 2000 near Kaprun towards Mechthild Geyer, born on June 2nd 1986, are used for her Master's thesis in her study course "Risk Prevention and Disaster Management" at the Postgraduate Center of the University of Vienna.

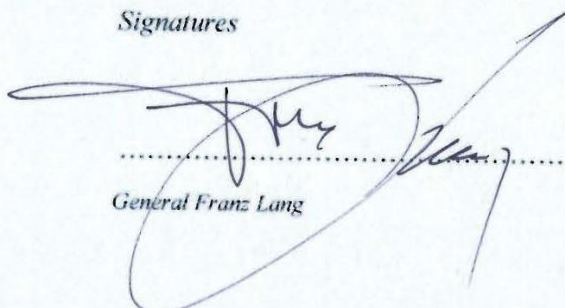
I myself will release the transliterated interview, which was conducted on May 5th 2017 and has to be used only in this released version, with my below signature.

Mechthild Geyer with her below signature binds herself to the duty to delete all "sound-material which was taken from our interview, and to employ the transcript nowhere else than in her Master's thesis in the study course "Risk Prevention and Disaster Management".

Date

June 7th 2017

Signatures



.....

General Franz Lang



.....

Mechthild Geyer

11.2 Abstracts in English and German

The present paper examines the possible scope of applying fundamental rights standards to crisis communications. Conducting two case studies of man-induced disasters, the applicability of the right to life, the right to freedom of information, the right to the protection of personal data, and the right to property is measured.

To approach this, the cable car disaster of the year 2000 in Kaprun / Austria is estimated as a paramount example of crisis communications. During the Kaprun case, the difficulties of the solving of the deaths of 155 victims were communicated, first to the qualified public, shortly afterwards to the media.

In the contrary, the case of the red sludge disaster Kolontár / Hungary is still not resolved: 10 people died at this event in October 2010, as the warnings of guardians have not been taken seriously, and, consequently, no action by the officials was triggered.

The sources on both disasters are of different quality, as for the Kaprun case the then high commander of the police forces could be canvassed for a guided interview, while for the Kolontár case less literature is available which was, therefore, augmented by investigations of the European Union which may not lack background political incentives.

According to the material, both courses of events are sorted to Steven Fink's four stages of a crisis (prodromal, acute, chronic, resolution). In order to explore the sensitivity of both cases to the rights of concern, two content analyses are, furthermore, conducted. The empirical methods result in the insights that the tendency to violations of fundamental rights is given especially during the prodromal and acute stages of the disaster, and that the right to freedom of information cannot be maintained in crisis settings what is also not required by international law.

To conclude these two main insights, the question for the kind of information that people need during a crisis is raised. It results in the insight that the specific emotional needs of people can impossibly be satisfied by abstract legal standards. Therefore, the uniqueness of every crisis setting requires a situational and empathic approach from the operational level instead of the normative level.

Die vorliegende Arbeit prüft die potenziellen Möglichkeiten, Grundrechte auf die Krisenkommunikation anzuwenden. Auf Basis zweier Fallstudien wird die Anwendbarkeit des Rechts auf Leben, des Rechts auf Informationsfreiheit, des Rechts auf Datenschutz und des Rechts auf Eigentum geprüft.

Dabei wird das Seilbahnunglück von Kaprun / Österreich im Jahr 2000 als Musterbeispiel der Krisenkommunikation betrachtet: Während dieses Unglücks mit 155 Todesopfern wurden Schwierigkeiten kommuniziert, zunächst gegenüber der qualifizierten Öffentlichkeit, in zweiter Instanz gegenüber den Medien.

Im Gegensatz dazu ist der Hergang der Rotschlammkatastrophe in Kolontar / Ungarn bis heute nicht vollständig aufgearbeitet: 10 Menschen starben an diesem Tag im Oktober 2010, weil Warnungen von Wächtern des Reservoirs ignoriert worden waren, und folglich keine Handlungen gesetzt wurden.

Die zur Verfügung stehenden Materialien sind für beide Fälle von unterschiedlicher Qualität. Denn zur Rückverfolgung der Katastrophe von Kaprun konnte der damalige Leiter des polizeilichen Führungsstabes für ein Interview gewonnen werden. In Bezug auf die Katastrophe von Kolontár ist wenig Literatur verfügbar, weshalb das Material durch die Ergebnisse von Untersuchungen durch die Europäische Union aufgestockt wurde, denen der politische Einschlag nicht abgesprochen werden kann. Entsprechend dieses Materials sind beide Ereignisse nach den vier Phasen der Krise laut Steven Fink (Frühwarnung, Akutphase, chronischer Verlauf, Auflösung) sortiert worden. Des Weiteren wurden zwei Inhaltsanalysen durchgeführt, um die Sensibilität der Ereignisse für die Grundrechte unter Betrachtung zu untersuchen. Die empirischen Methoden mündeten in die Einsicht, dass die Tendenz zu Grundrechtsverletzungen während der Frühwarn- und der Akutphase besonders hoch ist und dass das Recht auf Informationsfreiheit in einer Krisensituation nicht völkerrechtlich gewährleistet werden kann.

Um diese beiden Einsichten zu vervollständigen, wird die Frage nach den Informationen, die Bürger*innen in einer Krisensituation brauchen, aufgeworfen. Diese führt zu dem Schluss, dass spezifische emotionale Bedürfnisse nicht durch abstrakte gesetzliche Normen erfüllt werden können. Stattdessen erfordert die Einzigartigkeit einer jeden Krise, den situations-angepassten und empathischen Umgang mit Bedürfnissen auf der operationalen Ebene – anstatt einer Verordnung von normativer Ebene.